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JOSEPH F. SPANIOLO, JR.  
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No. 89-1500

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In The  
**Supreme Court of the United States**  
October Term, 1990

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BUSINESS GUIDES, INC.,

*Petitioner,*

vs.

CHROMATIC COMMUNICATIONS ENTERPRISES, INC.  
and MICHAEL SHIPP,

*Respondents.*

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On Writ Of Certiorari To The United States  
Court Of Appeals For The Ninth Circuit

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JOINT APPENDIX

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## TABLE OF CONTENTS

	Page
1. Relevant Docket Entries.....	1
2. Plaintiff's Memorandum of Law in Support of Its Application for a Temporary Restraining Order, Preliminary Injunction, dated October 29, 1986.	3
3. Complaint dated October 30, 1986.....	22
4. Sealed Affidavit of Victoria M. K. Burdick in Support of Plaintiff's Application for a Temporary Restraining Order and for Preliminary Injunction, dated October 30, 1986.....	32
5. Affidavit of Lisa B. Margolis in Support of Plaintiff's Application for a Temporary Restraining Order and Preliminary Injunction, dated October 30, 1986. (Exhibit "A" attached). ....	42
6. Affidavit of Andrew Desarle in Support of Plaintiff's Application for a Temporary Restraining Order and Preliminary Injunction, dated October 30, 1986.....	48
7. Affidavit of Michael Lambe in Support of Plaintiff's Application for a Temporary Restraining Order and Preliminary Injunction, dated October 30, 1986.....	52
8. Order Allowing the Submission of Affidavit Under Seal and In Camera, dated November 3, 1986. ....	57
9. Supplement to Sealed Affidavit of Victoria M. K. Burdick in Support of Plaintiff's Application for a Temporary Restraining Order and Preliminary Injunction, dated November 5, 1986. (Exhibits "A" & "B" attached). ....	59

## TABLE OF CONTENTS - Continued

	Page
10. Order Allowing the Submission of Declaration Under Seal and In Camera, dated November 7, 1986. ....	84
11. Declaration of Michael Lambe in Support of Plaintiff's Application for a Temporary Restraining Order and for Preliminary Injunction, dated November 7, 1986. ....	86
12. Declaration of Michael D. Dempsey, dated December 12, 1986. ....	90
13. Declaration of Michael A. Bamberger, dated December 15, 1986. ....	103
14. Declaration of Lisa B. Margolis, dated December 15, 1986. (Exhibits "A", "B", "D", & "G" attached). ....	111
15. Declaration of Victoria M. K. Burdick, dated April 25, 1987. ....	160
16. Declaration of Richard J. Rossini, dated April 25, 1987. ....	174
17. Declaration of Michael Lambe, dated April 25, 1987. ....	181
18. Declaration of Victoria White, dated April 25, 1987. ....	194
19. Declaration of Michael Shipp in Support of Motion for Award of Sanctions, dated May 11, 1988. (Exhibits "A", "B", & "C" attached). ....	200

## Docket

## No. RELEVANT DOCKET ENTRIES

12. Affidavit of Victoria M. K. Burdick in support of plaintiff's application for a temporary restraining order and for preliminary injunction, dated November 3, 1986.
39. Reporter's transcript of evidentiary hearing, held January 29, 1987. Document filed February 9, 1987.
40. Magistrate's report and recommendation, dated April 3, 1987. (Reprinted in the Appendix to the Petition for Writ of Certiorari at Pet. App. 64a).
42. Plaintiff's Exhibits 1-C, D, E; 1-H, I, J, K, L, M, and N; document labeled "F", filed April 9, 1987.
50. Sealed declaration of Grace D'Antoni, dated April 27, 1987.
52. Sealed declaration of Victoria White, dated April 27, 1987.
53. Sealed declaration of Gerard Loesch, dated April 27, 1987.
55. Sealed affidavit of Barbara Hochberg, dated April 27, 1987.
60. Reporter's transcript of proceedings, held December 12, 1986. Document filed May 1, 1987.
70. Magistrate's revised report and recommendation regarding rule 11 sanctions, dated September 4, 1987. (Reprinted in the Appendix to the Petition for Writ of Certiorari at Pet. App. 47a).
71. Reporter's transcript of proceedings, held July 9, 1987. Document filed September 15, 1987.
77. Letter to Judge Conti from J. Huntley Palmer, dated June 2, 1988. Document filed June 3, 1988.
80. Letter to Judge Conti from Neil Shapiro, dated July 12, 1988. Document filed July 18, 1988.

84. Court order re imposition of further sanctions, entered August 9, 1988. (Reprinted in the Appendix to the Petition for Writ of Certiorari at Pet. App. 27a).
  85. Judgment re payment of sanctions and dismissal of action, entered August 9, 1988.
  91. Reporter's transcript of proceedings, held November 7, 1986. Document filed July 14, 1989.
  92. Court order re rule 11 sanction of dismissal, entered February 22, 1990. (Reprinted in the Appendix to the Petition for Writ of Certiorari at Pet. App. 1a).
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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	)	86 CIV.
Plaintiff,	)	
	)	
v.	)	
	)	
CHROMATIC	)	
COMMUNICATIONS	)	
ENTERPRISES, INC., and	)	
MICHAEL SHIPP,	)	
Defendants.	)	

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PLAINTIFF'S MEMORANDUM OF LAW  
 IN SUPPORT OF ITS APPLICATION  
 FOR A TEMPORARY RESTRAINING  
 ORDER AND PRELIMINARY INJUNCTION



## TABLE OF CONTENTS

	PAGE
Preliminary Statement .....	[8]
Factual Statement .....	[10]
ARGUMENT .....	
PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTIVE RELIEF.....	[13]
A. Plaintiff Has Demonstrated A Likelihood Of Success On The Merits Since It Possesses A Valid Copyright Which Was Infringed By Defendants.....	[13]
B. Plaintiff Has Demonstrated Irreparable Injury And The Balance of Hardships Tips Decidedly In Its Favor .....	[17]
CONCLUSION .....	[21]

## TABLE OF AUTHORITIES

CASES	PAGE
<i>Adventures in Good Eating Inc. v. Best Places to Eat Inc.</i> , 131 F.2d 809 (7th Cir., 1942) .....	9
<i>American Code Co. v. Bensinger</i> , 282 F. 829 (2d Cir., 1922).....	15
<i>American Travel and Hotel Directory v. Gehrig Publ. Co.</i> , 4 F.2d 415 (S.D.N.Y., 1925) .....	10
<i>Apple Computer, Inc. v. Formula Intern, Inc.</i> , 725 F.2d 521 (9th Cir., 1984) .....	12
<i>Central Telephone Co. v. Johnson Publ. Co.</i> , 526 F.Supp. 838 (D.C.Col., 1981) .....	11
<i>Chain Store Business Guide, Inc. v. Wexler</i> , 79 F. Supp. 726 (S.D.N.Y., 1948) .....	8
<i>Chain Store Business Guide, Inc. v. Wexler</i> , 79 F.Supp. 726 (S.D.N.Y. 1948) .....	15
<i>Charlie's Girls, Inc. v. Revlon, Inc.</i> , 483 F.2d 953 (2d Cir. 1973) .....	7
<i>Dollcraft Industries, Ltd. v. Well-Made Toy Mfg.</i> , 479 F.Supp. 1105 (E.D.N.Y., 1978) .....	8
<i>Dow Jones v. Chicago Bd. of Trade</i> , 546 F.Supp. 113 (S.D.N.Y., 1982).....	8
<i>Eisenman Chemical Co. v. N. Industries, Inc.</i> , 595 F.Supp. 141 (D.Nev. 1984).....	9
<i>Encyclopedia Britannica Ed. Corp. v. Crooks</i> , 542 F.Supp. 1156 (W.D.N.Y 1982).....	10
<i>Harper &amp; Row Publishers v. Nation Enterprises</i> , 105 S. Ct. 2218 (1985).....	10

<i>Inge v. Twentieth Century-Fox Film Corp.</i> , 143 F. Supp. 294 (S.D.N.Y., 1956) .....	14
<i>Jewelers Circular Publ. Co. v. Keystone Publ. Co.</i> , 281 F. 83 (2d Cir. 1922), cert den., 259 U.S. 581 (1922) .....	6
<i>Kieselstein-Cord v. Accessories By Pearl Inc.</i> , 489 F.Supp. 732 (S.D.N.Y.) rev'd on other grounds, 632 F.2d 989 (2d Cir., 1980) .....	7
<i>Leon v. Pacific T. and T. Co.</i> , 91 F.2d 484 (9th Cir., 1937) .....	6
<i>List Publishing Co. v. Kelle</i> , 30 F. 772 (S.D.N.Y., 1887) .....	9
<i>McGraw Hill v. Worth Publ. Inc.</i> , 335 F. Supp. 415 (S.D.N.Y., 1971) .....	13
<i>National Lampoon Inc. v. American Broadcasting Co. Inc.</i> , 376 F.Supp. 733 (S.D.N.Y. 1974), aff'd., 497 F.2d 1343 (2d Cir., 1974) .....	11
<i>Nature's Bounty Inc. v. Super X Drugs Corp.</i> , 490 F.Supp. 50 (E.D.N.Y., 1980) .....	13
<i>Northwest Telephone System Inc. v. Local Publications Inc.</i> , 208 U.S.P.Q. 257 (D.C.Mont., 1979) .....	10
<i>Reubin H. Donnelly Corp. v. Guide to Multinational Businesses Inc.</i> , 193 U.S.P.Q. 791 (N.D.Ill., 1976) .....	9
<i>Schroeder v. William Morrow and Company</i> , 566 F.2d 3 (7th Cir., 1977) .....	8
<i>Sony Corp. v. Universal City Studios</i> , 464 U.S. 417, 104 S.Ct. 776, 784 (1984) .....	14

<i>Southwest Bell Telephone Co. v. Nationwide Inc.</i> , 371 F.Supp. 900 (W.D.Ark., 1974) .....	9
<i>Standard and Poor's Corp. v. Commodity Exchange</i> , 683 F.2d 704 (2d Cir., 1982) .....	11
<i>Stern Electronics Inc. v. Kaufman</i> , 523 F.Supp. 635 (E.D.N.Y., 1981), aff'd, 669 F.2d 852 (2d Cir., 1982) .....	11
<i>Sub-Contractors Register v. McGovern's C. and B. Manual</i> , 69 F. Supp. 507 (S.D.N.Y., 1946) .....	9
<i>Transgo, Inc. v. Transmission Parts Corp.</i> , 768 F.2d 1001 (9th Cir. 1985), cert. denied, 106 S. Ct. 802 (1986) .....	11
<i>Universal City Studios v. Film Ventures Intern</i> , 543 F. Supp. 1134 (C.D. Cal. 1982) .....	11
<i>WOPOW, Inc. v. MRLJ Enterprises</i> , 584 F.Supp. 132 (D.C. Cir. 1984) .....	9
<i>Wainwright Sec. v. Wall Street Journal</i> , 558 F.2d 91 (2d Cir., 1977), cert. denied, 434 U.S. 1014 (1978) ....	11
<i>Wm. Inglis &amp; Sons Baking v. ITT Cont. Baking Co.</i> , 526 F.2d 86 (9th Cir. 1975) .....	6
<i>Zacchini v. Scripps-Howard Broadcasting Co.</i> , 433 U.S. 562 (1977) .....	13

#### STATUTES

17 USC § 103 .....	6
17 USC § 410 (c) .....	7, 8

#### OTHER AUTHORITIES

H.R. Rep. No. 1476 94th Cong. 2d Sess. 157 (1976) .....	8
Copyright L. Rep. (CCH) ¶ 25, 423 .....	8
Nimmer on Copyright § 1.10 (1984) .....	14

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	)	86 CIV.
Plaintiff,	)	
v.	)	PLAINTIFF'S
CHROMATIC	)	MEMORANDUM
COMMUNICATIONS	)	OF LAW IN SUPPORT
ENTERPRISES, INC., and	)	OF ITS APPLICATION
MICHAEL SHIPP,	)	FOR A TEMPORARY
Defendants.	)	RESTRAINING ORDER
	)	AND PRELIMINARY
	)	INJUNCTION.

Preliminary Statement

This case involves a directory of computer and software retailers. Defendants copied names and addresses and other information from Business Guides, Inc.'s ("Plaintiff") directory including "seeds" and altered business names and addresses that Plaintiff placed in the Directory with the express purpose of identifying potential unauthorized users of the Directory's listings. Defendants' copying of the seeds constitutes highly probative

evidence of piracy. By copying the Directory, defendants avoided the substantial expenditure of time and money that Plaintiff incurred in compiling the Directory and are thus able to offer the same product at a significantly reduced price.

Business Guides, Inc. ("Plaintiff") brings this action to enjoin Defendants preliminary and permanently from advertising, marketing, publishing and distributing their pirated versions of Plaintiff's copyrighted directory of computer and software retailers and thereby forestall the immediate and potentially fatal harm Plaintiff will suffer if Defendants' unlawful activities continue unabated.

Plaintiff expended fourteen months of talent and labor, at a cost of many tens of thousands of dollars, to canvass, research, compile, verify and publish its copyrighted directory. Defendants purchased Plaintiff's Directory and proceeded to merely replicate its contents in the production of substantially cheaper imitations in print and on a computer diskette without any original creative labor of their own, and with the apparent aim of appropriating Plaintiff's extensive marketing success.

Plaintiff's Directory was and is validly copyrighted under the protection of the United States Copyright Laws. It is indisputable that Defendants have infringed that copyright and seek to unfairly capitalize on their unlawful actions by advertising, marketing, and ultimately publishing and distributing to Plaintiff's customers their cheaper pirated diskette. Defendants' actions will, if unchecked, effectively destroy Plaintiff's ability to compete by rendering its Directory unmarketable. Injunctive relief is thus absolutely essential to avoid substantial



and irreparable harm to Plaintiff's business and to the integrity of Plaintiff's work product. Moreover, such injuries, when compared to the negligible harm to be incurred by Defendants by the issuance of injunctive relief where Plaintiff seeks to expedite these proceedings, clearly demonstrate that the balance of hardships involved tips decidedly in Plaintiff's favor.

#### Factual Statement\*

Plaintiff is engaged in the business of publishing and marketing books and other materials. Plaintiff has published among many other titles, a comprehensive compilation of computer hardware and software retail outlets entitled "Directory of Computer + Software Retailers" ("Directory"). The Directory is a distinctive product and contains far more comprehensive information than any of the other directories now on the market. This Directory has been published in print annually since 1983. Plaintiff undertook substantial effort and expense in the compilation of the Directory. Because the Directory has substantial research and completion costs, the printed version has been priced at \$350 for the 1983 edition and \$389 for the 1984 through 1986 editions. When Plaintiff first entered the market in 1983, its \$350 price was far lower than the prices charged by its competitors which ran from \$1,500 and up. In October 1985, Plaintiff began offering

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\*The signature pages on the affidavits supporting the factual statement are FAX copies. We are awaiting the delivery of the original documents from New York City and will file them with the court as soon as they arrive which we anticipate will be the day after these papers are filed.

the directory on a diskette to the general public. The diskette version is priced at \$1,125.

As a precaution against the pirating of its contents, "seeds", false businesses or business addresses and altered business names and addresses, were included among the thousands of listings contained within the Directory. Plaintiff has copyrighted the 1984 through 1986 editions of its Directory.

Since at least May 1984 Chromatic Communications Enterprises, Inc. ("Chromatic") has advertised and marketed "The Personal Computer - An Industry Source Book" to the public and to business purchasers of Plaintiff's Directory at a substantially lower price than the Directory. Following the publication of "The Personal Computer - An Industry Source Book," in approximately May 1985, Chromatic began to advertise and market another directory titled "The Directory of Microcomputer Retailers." Subsequently, in approximately March 1986 Chromatic began to advertise and market its directory on computer diskettes, entitled "MicroLeads", for a special introductory price of \$595, \$530 lower than the price of Plaintiff's diskettes.

In March, 1986, Plaintiff received Chromatic's advertising materials for its diskette. Plaintiff then attempted to purchase a copy of Chromatic's diskette, but did not receive the diskette until the end of August, 1986. In reviewing Chromatic's diskette, Plaintiff discovered that it contained "seeds" from the 1984 through 1986 editions of its directory. Likewise, in reviewing Chromatic's printed directories in October 1986, Plaintiff discovered that that directory also contained the same seeds as well



as a number of others. Since Chromatic had included altered names and addresses appearing in the Directory in its printed directories and on its diskette and printed directories at \$247.50 and a diskette at \$595 that Plaintiff knew would have to be sold for far higher prices if the extensive canvassing, research, verification, and compilation necessary to produce such directories and a diskette were actually accomplished, it became apparent that Defendants had infringed Plaintiff's copyright in the Directory by merely copying Plaintiff's listings.

In correspondence with counsel for Defendants prior to institution of this action, Plaintiff's counsel demanded that Defendants cease and desist from infringing Plaintiff's copyright in the Directory and destroy all infringing materials. Defendants refused to comply. Instead, defendants have stated that all they will do is produce the documents used to compile the material on their diskette and perform a line-by-line comparison of their diskette and Plaintiff's Directory. Defendants thus continue to advertise and market their identical, cheaper, and pirated printed and diskette directories. As a result, Plaintiff is threatened with a significant loss of customers, a loss of its credibility in the market place and, ultimately, the failure of its Directory and its diskette as competitive products. Despite this threat, Plaintiff has advised defendants that it is willing to continue to attempt to resolve this matter. However, it is imperative that defendants be prevented from advertising their printed and diskette directories at the Comdex trade show on November 9, 1986. That trade show is extremely important because it is

the largest trade show for the microcomputer marketplace and because it provides publishers such as Plaintiff with a captive audience. Allowing defendants to advertise at Comdex would result in further substantial and irreparable harm.

### ARGUMENT

#### PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTIVE RELIEF

The Ninth Circuit test for the granting of a preliminary injunction has been clearly established:

"One moving for a preliminary injunction assumes the burden of demonstrating *either* a combination of probable success and the possibility of irreparable injury *or* that serious questions are raised and the balance of hardship tips sharply in his favor."

*Wm. Inglis & Sons Baking v ITT Cont. Baking Co.*, 526 F.2d 86, 88 (9th Cir. 1975), quoting *Charlie's Girls, Inc. v. Revlon, Inc.*, 483 F.2d 953, 954 (2d Cir. 1973). As discussed below, Plaintiff has easily satisfied all prerequisites for the issuance of a temporary restraining order and a preliminary injunction.

#### A. Plaintiff Has Demonstrated A Likelihood of Success On The Merits Since It Possesses A Valid Copyright Which Was Infringed By Defendants.

A directory or compilation, such as Plaintiff's Directory has consistently been held to be an appropriate and proper subject for copyright protection. *Jewelers Circular Publ. Co. v. Keystone Publ. Co.*, 281 F. 83, 87-88 (2d Cir.

1922), *cert. den.*, 259 U.S. 581 (1922); *Leon v. Pacific T. and T. Co.*, 91 F.2d 484 (9th Cir., 1937); *Schroeder v. William Morrow and Company*, 566 F.2d 3 (7th Cir., 1977). *Schroeder*, which considered the predecessor of 17 U.S.C. § 103, found a gardening directory, closely analogous to the retailer directory at issue here, to be an appropriate subject for copyright protection. The *Schroeder* Court held that an original compilation of names is entitled to copyright protection even if the listings are in the public domain. *Schroeder* also held that while a copyright will not necessarily protect the names and addresses themselves, it will protect the product of the compiler's industry.

Plaintiff's Directory, then, is an appropriate subject for copyright protection because directories in general and moreover, directories produced by the methodology employed by this specific Plaintiff, have been held subject to such protection. *See, Chain Store Business Guide, Inc. v. Wexler*, 79 F. Supp. 726 (S.D.N.Y., 1948) where a directory produced by Plaintiff's predecessor company in precisely the same manner as Plaintiff's Directory in this action, was held to be copyrightable by the District Court for the Southern District of New York.

Plaintiff's Directory is also an appropriate subject for copyright protection because Plaintiff possesses certificates of copyright registration covering the 1984 through 1986 editions of the Directory and the information in them. As the Copyright Act provides in 17 U.S.C. § 410(c), a certificate of copyright registration:

" . . . shall constitute *prima facie* evidence of the validity of the copyright and of the facts stated in the certificate." (emphasis added)

*See, Kieselstein-Cord v. Accessories By Pearl Inc.*, 489 F.Supp. 732 (S.D.N.Y.) *rev'd on other grounds*, 632 F.2d 989 (2d Cir., 1980) and *Dollcraft Industries, Ltd. v. Well-Made Toy Mfg.*, 479 F.Supp. 1105 (E.D.N.Y., 1978) (in which cases New York Federal District Courts held certificates of copyright registration to constitute *prima facie* evidence of valid copyright under facts similar to the facts in the immediate case). Thus, under 17 U.S.C. § 410 (c) Plaintiff is presumed in law to possess a valid copyright over its Directory, and it is the burden of Defendants to prove the contrary. H.R. Rep. No. 1476, 94th Cong., 2d Sess. 157 (1976); *Transgo, Inc. v. Transmission Parts Corp.*, 768 F.2d 1001, 1019 (9th Cir. 1985), *cert. denied*, 106 S. Ct. 802 (1986); *Kieselstein-Cord, supra*, at 734. Moreover, in *Dow Jones v. Chicago Bd. of Trade*, 546 F.Supp. 113, 115 (S.D.N.Y., 1982), Copyright L. Rep (CCH) ¶ 25, 423, the District Court for the Southern District of New York recently found two independent theories upon which to justify copyright protection for a directory: 1) the expenditure of labor in compiling the information; and 2) the compiler's exercise of editorial selectivity and subjective judgment. Clearly, Plaintiff has demonstrated that it possesses a valid copyright in its Directory and in the organized information contained in it.

The affidavits submitted by Plaintiff set forth *prima facie* evidence that Defendants infringed Plaintiff's copyright by simply copying the compilation contained in Plaintiff's Directory. It is well established that the mere copying of a copyrighted directory of another constitutes infringement. *Schroeder v. William Morrow and Company, supra*; *Adventures in Good Eating Inc. v. Best Places to Eat*



*Inc.*, 131 F.2d 809 (7th Cir., 1942); *List Publishing Co. v. Keller*, 30 F. 772 (S.D.N.Y., 1887).

The fact that Plaintiff's "seeds" (the fictitious listings and the altered names and addresses in the Directory) are included in Defendants' diskette and printed directory presents what various courts have called "persuasive", "prima facie", and "highly probative" evidence of piracy. *Eisenman Chemical Co. V. N. Industries, Inc.*, 595 F.Supp. 141, 146 (D.Nev. 1984); *Reubin H. Donnelly Corp. v. Guide to Multinational Businesses Inc.*, 193 U.S.P.Q. 791 (N.D.Ill., 1976); *Southwest Bell Telephone Co. v. Nationwide Inc.*, 371 F.Supp. 900 (W.D.Ark., 1974); *Sub-Contractors Register v. McGovern's C. and B. Manual*, 69 F. Supp. 507 (S.D.N.Y., 1946); *American Travel and Hotel Directory v. Gehrig Publ. Co.*, 4 F.2d 415 (S.D.N.Y., 1925). Although defendants may have eliminated the false names and addresses through verification by telephone, their failure to correct the altered names and addresses constitutes highly probative evidence of piracy given the odds that the same errors would occur by chance.

Furthermore, Defendant's copying of the listings contained in Plaintiff's Directory does not constitute legal "fair use" because Defendants did not:

- a). conduct a prior, independent canvass; and
- b). verify any information derived from Plaintiff's Directory.

The conducting of a prior, independent canvass and the verification of derivative information are required under the "fair use" defense to copyright infringement. *WOPOW, Inc. v. MRLJ Enterprises*, 584 F.Supp. 132, 138 n.17 (D.C. Cir. 1984) *Central Telephone Co. v. Johnson Publ.*

*Co.*, 526 F.Supp. 838 (D.C.Col., 1981); *National Research Bureau Inc. v. Marvin H. Kucker*, *supra*; *Northwest Telephone System Inc. v. Local Publications Inc.*, 208 U.S.P.Q. 257 (D.C.Mont., 1979). In *Central Telephone Co.*, the Court held that a subsequent verification, without a prior, independent canvass, was insufficient to satisfy the twin requisites of the "fair use" defense and the Court found an infringement. Thus, even if Defendants may have called to verify the information, the fair use doctrine is still inapplicable because there was not even a remotely colorable prior, independent canvass.

That defendants took the pirated material from Plaintiff's printed material and market it not only in print but also on a computer diskette makes no difference. "If defendant's work adversely affects the value of any of the rights in the copyrighted work [in this case the right to market the directory on diskettes] the use is not fair." *Harper & Row Publishers v. Nation Enterprises*, 105 S. Ct. 2218, 2235 (1985); and see also *Encyclopedia Britannica Ed. Corp. v. Crooks*, 542 F.Supp. 1156, 1171 (W.D.N.Y. 1982). Moreover, Defendants' diskette competes directly with Plaintiff's diskette version of the directory.

In sum, there is a strong likelihood of success on Plaintiff's claim that it owns a valid copyright which was improperly infringed by defendants.

#### B. Plaintiff Has Demonstrated Irreparable Injury And The Balance of Hardships Tips Decidedly In Its Favor.

Copyright infringement divests the copyright holder of exclusive control over his unique intellectual property.

Accordingly, upon a showing of infringement, the general rule is that irreparable injury is presumed. *Apple Computer, Inc. v. Formula Intern, Inc.*, 725 F.2d 521, 525 (9th Cir. (1984); *Universal City Studios v. Film Ventures Intern*, 543 F.Supp. 1134, 1139 (C.D. CAL. 1982); *Stern Electronics Inc. v. Kaufman*, 523 F.Supp. 635 (E.D.N.Y., 1981), *aff'd*, 669 F.2d 852 (2d Cir., 1982); *Wainwright Sec. v. Wall Street Journal*, 558 F.2d 91 (2d Cir., 1977), *cert. denied*, 434 U.S. 1014 (1978); *Standard and Poor's Corp. v. Commodity Exchange*, 683 F.2d 704 (2d Cir., 1982); *National Lampoon Inc. v. American Broadcasting Co. Inc.*, 376 F.Supp. 733, 749-50 (S.D.N.Y. 1974), *aff'd*, 497 F.2d 1343 (2d Cir., 1974).

As the Second Circuit observed:

"A copyright holder in the ordinary case may be presumed to suffer irreparable harm when his right to the exclusive use of the copyrighted material is invaded" *Rice v. American Program Bureau*, 446 F.2d 685, 688 (2d Cir., 1971).

Similarly, the Third Circuit recently stated:

"[It is the] prevailing view that a showing of copyright infringement or reasonable likelihood of success on the merits raises a presumption of irreparable harm." *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1254 (3d Cir., 1983).

In any event, even if irreparable injury is not presumed, the record here amply demonstrates the likelihood of such harm to Plaintiff. Defendants are seeking to sell their pirated diskette version of Plaintiff's directory at a price substantially less than that of Plaintiff's diskette directory to a market identified and largely created by Plaintiff's labor and expense. The affidavits submitted by Plaintiff clearly demonstrate the extensive efforts

expended by Plaintiff in creating its directory. Defendants on the other hand, simply derived their imitation printed and diskette directories from the fruits of Plaintiff's labor and now, without any investment of the great time and expense required to produce the quality of work contained in Plaintiff's Directory, are attempting to "cash in" on Plaintiff's efforts by stealing its customers, while using Plaintiff's copyrighted work product as the bait. Unless enjoined, Defendants' pirated printed and diskette directories will render the original Directory and Plaintiff's diskette directory overpriced and unmarketable products. Accordingly, given the *prima facie* case of infringement stated above and the foregoing considerations, Plaintiff has demonstrated the threat of serious and possible fatal, irreparable injury from Defendants' conduct.

Finally, the balance of hardships clearly favors the granting of injunctive relief. If a temporary restraining order does not issue, Defendants will be able to continue to market and advertise their pirated printed and diskette directories at forthcoming trade shows, one of which is scheduled for November 9, 1986, in newsletters and through direct solicitation. This will substantially affect, in an irreparable fashion, Plaintiff's hard earned customer base. Additionally, if a temporary restraining order is not granted Plaintiff may lose its ability to successfully prosecute this action since the Defendants, aware that they may be subject to liability in this copyright action, will be able to take various counteractions to interfere with the preservation of internal documents and other important evidence.



On the other hand, the requested relief will merely restrain Defendants pending speedy determination of this action. It should be noted that there are no First Amendment considerations which might preclude the granting of the requested injunctive relief prior to the publication of Defendant's directory. *See generally, Nimmer on Copyright*, § 1.10 (1984); *McGraw Hill v. Worth Publ. Inc.*, 335 F. Supp. 415 (S.D.N.Y., 1971); *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977). The requested injunctive relief will not affect the remainder of Defendants' business and will therefore cause it little hardship. Moreover, "the potential losses to Defendant are easily calculable and can be secured against by a bond." *Nature's Bounty Inc. v. Super X Drugs Corp.*, 490 F.Supp. 50 (E.D.N.Y., 1980). Additionally, the facts in the immediate case are simple and straight forward. Plaintiff has sought expedited discovery in order to speedily resolve the merits of Plaintiff's infringement claim.

Since Plaintiff satisfies the necessary preconditions, Defendants should be restrained from infringing Plaintiff's copyrights *pendente lite*. The United States District Courts are expressly empowered to issue such relief to prevent copyright infringement. *See*, 17 U.S.C. § 502 (providing that the District Courts of the United States are expressly empowered under the Copyright Act to "grant temporary and final injunctions as [they] may deem reasonable to prevent or restrain infringement of a copyright"); *Sony Corp. v. Universal City Studios*, 464 U.S. 417, 104 S.Ct. 776, 784 (1984); *American Code Co. v. Bensinger*, 282 F. 829 (2d Cir., 1922); *Inge v. Twentieth Century-Fox Film Corp.*, 143 F. Supp. 294 (S.D.N.Y., 1956). The *Inge* court stated, at 299:

"[I]n cases of infringement of copyright, an injunction has always been recognized as a proper remedy because of the inadequacy of the legal remedy; that the remedy exists both by statute and independently thereof." (citation omitted)

Accordingly, as the District Court for the Southern District of New York recognized in 1948 on substantially identical facts, Plaintiff is entitled to a temporary restraining order and a preliminary injunction. *Chain Store Business Guide, Inc. v. Wexler*, 79 F.Supp. 726 (S.D.N.Y. 1948).

### CONCLUSION

For all the foregoing reasons, it is respectfully submitted that Plaintiff's applications for a temporary restraining order and a preliminary injunction, be in all respects granted, together with such other and further relief as this Court may deem just and proper.

Dated: October 29, 1986      Respectfully submitted,

FINLEY, KUMBLE, WAGNER, HEINE,  
UNDERBERG, MANLEY, MYERSON  
& CASEY

MICHAEL D. DEMPSEY  
LISA B. MARGOLIS

By: Michael D. Dempsey  
Michael D. Dempsey  
*Attorneys for Plaintiff*  
*Business Guides, Inc.*

(Certificate of Service Omitted in Printing)

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MICHAEL D. DEMPSEY  
LISA B. MARGOLIS

Attorneys for Plaintiff  
BUSINESS GUIDES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

C 86 6164 SC

BUSINESS GUIDES, INC.	)	86 CIV.
Plaintiff,	)	
-against-	)	PROPERTY
	)	RIGHTS
CHROMATIC	)	
COMMUNICATIONS	)	COMPLAINT
ENTERPRISES, INC., and	)	
MICHAEL SHIPP,	)	1. COPYRIGHT
	)	2. CONVERSION
Defendants.	)	3. UNFAIR
	)	COMPETITION

Plaintiff Business Guides, Inc. ("Plaintiff") for its complaint herein, alleges:

Jurisdiction and Venue

1. This is an action brought under the Copyright Laws of the United States (17 U.S.C. § 101, *et seq.*) and under the common law.

2. This Court had jurisdiction of this action under 28 U.S.C. §§ 1331, 1332, and 1338 in that it arises under the laws of the United States pursuant to which there is exclusive jurisdiction in this Court, the matter in controversy exceeds the sum of Ten Thousand Dollars (\$10,000), exclusive of interest and costs, and there is diversity of citizenship.

3. Venue lies in the Northern District of California pursuant to 28 U.S.C. § 1391(b) as the Claim arises in said judicial district, and pursuant to 28 U.S.C. § 1391(c) as defendant Chromatic Communications Enterprises, Inc. ("Chromatic") is doing business in said judicial district and defendant Michael Shipp ("Shipp") resides in said judicial district.

Parties

4. Plaintiff is a corporation organized under the laws of the State of New York and doing business in the State of New York. Its principal place of business is located at 425 Park Avenue, New York, New York 10022. Plaintiff is engaged, *inter alia*, in the business of publishing and marketing books, business guides and directories, and other such materials.

5. Upon information and belief, at all relevant times herein, defendant Chromatic was and is a corporation organized under the laws of the State of California, has done and is doing business in the City of Walnut Creek, County of Contra Costa, State of California, and is engaged in the business of publishing and marketing books and other such materials, including technical and specialty reference books and materials.



6. Upon information and belief, at all times herein relevant, defendant Michael Shipp ("Shipp") was and is domiciled in and a citizen of the Northern District of the State of California and is the President of Chromatic.

#### Background of Infringements

7. Since 1983, Plaintiff has published and marketed annually a directory of computer hardware and software outlets, titled "Director of Computer + Software Retailers" (the "Directory"), as well as updates to those editions and chain computer stores. In October 1985, Plaintiff began to offer the Directory on diskette to the general public.

8. In connection with the publication and marketing of the Directory, Plaintiff expended substantial time and expense in the conception and creation of the Directory, and the original compilation, and periodic updating, of the extensive information contained in the Directory.

9. At all relevant times, Plaintiff has owned the exclusive copyrights of all editions of the Directory including the 1983 through 1986 editions of the "Directory," has owned the exclusive copyright to the compilation of information contained within each edition of the Directory, has obtained from the Copyright Office registration and certification of the Directory copyright for each year, and has affixed appropriate notices to each Directory printed. Copies of Plaintiff's copyright registration certificates for the 1983 through 1986 editions of the Directory are annexed hereto as Exhibits "A" through "D," respectively.

10. Upon information and belief, between 1984 and 1986, Chromatic undertook by various unlawful means to simply copy and otherwise utilize the compilation of information contained within the Directory to produce similar, competing, substantially lower-priced printed directories entitled "The Personal Computer - An Industry Source Book," "The Directory of Microcomputer Retailers" and a diskette directory entitled "MicroLeads" infringing upon Plaintiff's copyrights in the Directory (hereinafter collectively referred to as the "Pirated Directories").

11. Upon information and belief, Shipp is the publisher of "MicroLeads," "The Personal Computer - An Industry Source Book," and "The Directory of Microcomputer Retailers."

12. Since at least May 1984, Chromatic has undertaken to advertise and has advertised and marketed "The Personal Computer - An Industry Source Book" to the public and to business purchasers of Plaintiff's Directory in particular, at a substantially lower price than the Directory.

13. Since at least March, 1986, Chromatic has undertaken to advertise and market and has advertised and marketed "MicroLeads" to the public and to business purchasers of Plaintiff's Directory in particular, at a substantially lower price than Plaintiff's diskette version of the Directory.

14. Upon information and belief, Chromatic intends to market its Pirated Directories at trade shows which will be attended by a substantial number of past and prospective buyers of Plaintiff's Directory.

15. Chromatic has neither paid Plaintiff for the compilation of information contained within the Directory nor received authorization to copy or otherwise utilize the information contained in Plaintiff's Directory to produce its Pirated Directory.

16. Upon information and belief, the aforementioned actions of Chromatic alleged in paragraphs 10 through 15 were personally participated in by Shipp. Upon information and belief, said defendant supervised such activity.

First Claim for Relief  
(Copyright Infringement)

17. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 16 as though fully set forth herein.

18. The Directory contains material in form wholly originated by Plaintiff and is a matter subject to copyright protection under the laws of the United States.

19. The Directory is a literary work pursuant to and as defined by, 17 U.S.C. § 101. At all relevant times, copyright protection subsists in the Directory pursuant to the provisions of 17 U.S.C. § 102, and the Directory is subject to copyright protection pursuant to the provisions of 17 U.S.C. § 104.

20. At all relevant times, Plaintiff has been and still is the sole proprietor and holder of all right, title, and interest in and to the copyrights of the Directory and information contained therein with exclusive rights

thereto, pursuant to the provisions of 17 U.S.C. § 101, *et seq.*

21. By reason of their conduct as hereinbefore alleged, defendants have violated and intend to continue to violate the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).

22. As a result of defendants' infringement of its copyrights, Plaintiff has already been damaged in amount to be proved at trial but not less than Seven Hundred and Fifty Thousand (\$750,000) Dollars, and is threatened with immediate and substantial irreparable harm.

Second Claim for Relief  
(Conversion)

23. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 16 and 18 through 22 of the complaint as though fully set forth herein.

24. The conduct of defendants hereinbefore alleged constitutes an intentional misappropriation and conversion of the property of Plaintiff for the benefit and profit of defendants.

25. By reason of their misappropriation and conversion of the property of Plaintiff, defendants have committed a tortious act and Plaintiff has suffered substantial damages, and is threatened with imminent and substantial irreparable harm.



### Third Claim for Relief

26. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 16, 18 through 22 and 24 through 25 of the complaint as though fully set forth herein.

27. The conduct of defendants as hereinbefore alleged constitutes a bad faith, unfair and unjustifiable attempt to profit from Plaintiff's expenditure of time, labor, and talent in creating the Directory and is a form of commercial immorality constituting unfair competition.

[28.] By reason of defendants' unfair competition, Plaintiff has suffered substantial damages and is threatened with imminent and substantial irreparable harm.

WHEREFORE, Plaintiff prays for judgment as follows:

1. That defendants, their respective officers, agents, servants, employees and distributors, sales force and attorneys or any affiliates, subsidiaries or parent companies, and all those persons in active concert or participation with them be preliminarily and thereafter permanently enjoined and restrained from:

a. publishing, distributing, selling or otherwise using the Directory or information contained therein;

b. publishing, advertising, marketing, distributing, selling or otherwise using the Pirated Directories, "The Directory of Microcomputer Dealers," "Micro-Leads" and "The Personal Computer - an Industry Source Book," under those names or any other name; and

c. otherwise infringing upon Plaintiff's copyright in the Directory.

2. That defendants be required to deliver for impoundment during the pendency of this action, and to deliver for destruction any and all copies of the Pirated Directories and any and all documents and materials utilized for making same, or in connection therewith, or which were to comprise same.

3. That defendants be required to account for all gains, profits and advantages derived by them through their respective infringements of Plaintiff's copyrights.

4. Against defendants and in favor of Plaintiff on each claim, for damages in an amount which cannot presently be determined, but in an amount not less than Seven Hundred Fifty Thousand Dollars (\$750,000).

5. Against defendants and in favor of Plaintiff, for damages in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) as exemplary and punitive damages for their willful and deliberate infringement of Plaintiff's copyrights in the Directory.

6. Granting Plaintiff the costs and disbursements of maintaining this action, including reasonable attorneys' fees.

7. Granting Plaintiff such other and further relief as this Court may deem just and proper.

DATED: October 30, 1986

JAMES, GACK & FREEMAN  
 RICHARD W. FREEMAN, JR.  
 FINLEY, KUMBLE, WAGNER,  
 HEINE,  
 UNDERBERG, MANLEY,  
 MYERSON & CASEY  
 MICHAEL D. DEMPSEY  
 LISA B. MARGOLIS

By /s/ Michael D. Dempsey BM  
Michael D. Dempsey  
 Attorney for Plaintiff  
 BUSINESS GUIDES, INC.

# VERIFICATION

State of New York )  
 ) ss:  
 County of New York )

I, J. Roger Friedman, President of Business Guides, Inc., Plaintiff, in the above-entered action, being first duly sworn, say that the foregoing complaint is true and correct.

BUSINESS GUIDES, INC.

By: /s/ J. Roger Friedman  
 President

Subscribed and sworn to before me on Oct. 30, 1986.

/s/ Rhona Plunka

(Notary Seal)

(Certificates of Copyright Registration (Exhibits)  
 and Certificate of Service Omitted in Printing)

---

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LISA B. MARGOLIS

Attorneys for Plaintiff  
BUSINESS GUIDES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.	)	86 CIV.
	)	SEALED
Plaintiff,	)	AFFIDAVIT
	)	OF VICTORIA
-against-	)	M. K. BURDICK
	)	IN SUPPORT
CHROMATIC	)	OF PLAINTIFF'S
COMMUNICATIONS	)	APPLICATION
ENTERPRISES, INC., and	)	FOR A
MICHAEL SHIPP	)	TEMPORARY
	)	RESTRAINING
	)	ORDER AND
	)	FOR
	)	PRELIMINARY
	)	INJUNCTION

SUBMITTED  
UNDER SEAL  
PURSUANT TO  
ORDER OF THE  
COURT ON  
FILE HEREIN

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) : ss.:

VICTORIA M. K. BURDICK, being duly sworn,  
deposes and says:

1. I am a Sales Representative at Mail Marketing Resources, which is a Division of Business Guides, Inc. ("Plaintiff"), and submit this affidavit in support of Plaintiff's application for a temporary restraining order and preliminary injunction. The purpose of this affidavit is to discuss indisputable proof of defendants' infringement of Plaintiff's copyright and to fully detail Plaintiff's exhaustive efforts to canvass and compile the information contained in the 1983 through 1986 copyrighted editions of Plaintiff's "Directory of Computer + Software Retailers" (the "Directory").

2. I have held my current position since January 1986. From July, 1984 through December, 1985 I was employed by Plaintiff as the Editor of New Property Development, and from January 1985 through December 1985 as Senior Editor, New Property Development. From July, 1983 through June, 1984 I was employed by Plaintiff as an Associate Research Editor. From September, 1982 through June, 1983 I was a research assistant with Plaintiff.

3. I became aware of Chromatic Communications Enterprises, Inc.'s ("Chromatic") publication and sale of its competing diskette directory when I received an advertisement for the diskette in April, 1986.

4. I became suspicious that Chromatic copied its listings from Plaintiff's Directory because a previous



Chromatic Directory contained a false business "seeded" in Plaintiff's Directory precisely for the purpose of identifying efforts to pirate the listings contained in the Directory. Plaintiff then attempted to purchase Chromatic's diskette but did not receive it until the end of August, 1986. Upon examining the Chromatic diskette, it was obvious that Chromatic copied its listings from Plaintiff's Directory because the entries included other altered names of businesses or business addresses, "seeded" in the 1984 through 1986 editions of the "Directory of Computer + Software Retailers." Although Chromatic had eliminated the false businesses that Plaintiff had seeded in the "Directory of Computer + Software Retailers," it failed to correct five altered business names and addresses. That Chromatic had listed these altered business names and addresses convinced me that Chromatic had copied the Directory's copyrighted information, and was utilizing the fruits of Plaintiff's extensive labors to produce its own version of Plaintiff's copyrighted work. Copies of Chromatic's entries of the "seeds" are annexed as Exhibit "A." Realizing that Chromatic had copied the Directory in preparing its diskette directory, I thought it advisable to review Chromatic's printed directories to see whether they contained the same "seeds." My review showed that they contained the same "seeds" as Chromatic's diskette version as well as some additional "seeds" from the Directory. Copies of those "seeded" entries are attached hereto as Exhibit "B."

5. From September 1982 until December 1985 I was involved in the production of the Directory under the

direct supervision of Mr. Michael Lambe and the publisher. My primary responsibilities in this regard were threefold:

- a) Identification and retrieval of prospective sources for names of computer retailers;
- b) Preparation and organization of a card index of prospective computer retailers; and
- c) Supervision of telephone interviewing and editing of telephone interview responses.

These assignment, as detailed below, resulted in the list of names and other information to be included in the Directory.

#### Identification and Retrieval of Prospective Sources

6. I obtained prospective listings for the Directory from the following sources:

- (a) I telephoned manufacturers of personal computers such as Apple and Commodore. These companies agreed to send Plaintiff a listing of their dealers.
- (b) Plaintiff also subscribes to trade publications such as "Computer Dealer", "Computer Merchandising", and "Computer Reseller News", among others, which contain weekly or monthly reports of computer industry events, including store openings, changes of addresses, changes of names and other pertinent information.
- (c) Manufacturer cooperative ads, advertisements by a computer manufacture which contain the names and addresses of retail stores where the manufacturer's products may be purchased, were obtained from a clipping service



named "Ad R Holt" and used as a source for prospective listings in the Directory.

(d) Another source used was the subscription list to Plaintiff's own publication, "Computer + Software News."

(e) Plaintiff also purchased a list of members from the National Office Machine Dealers Association, which provided the names and addresses of many possible listings.

(f) Similarly, a membership list from the Association of Better Computer Dealers was also obtained.

(g) A bulk subscription list from "Personal Computing" magazine was also used to identify prospective listings.

(h) Other directories published by Chain Store Guide, Inc., Plaintiff's parent, provided the names of stores, although not exclusively computer stores, which sold computers on a retail basis.

(i) Finally, I canvassed the Yellow Pages of the nation's largest 150 standard metropolitan statistical areas (SMSA's) for computer retailers.

In total, over 7,350 names and addresses of prospective listings were compiled from these sources. This process required a majority of my time during the months of November and December of 1982 and January and February of 1983. Assisting me on this assignment were two other employees.

#### Preparation and Organization of Prospect File

7. After having compiled all of the sources of prospective computer retailers, I spent March of 1983 preparing and organizing a "prospect file." This assignment was solely my responsibility.

8. Such prospective listing's names and address were placed on index cards. These cards were then copied for cross-referencing. I created two card files for three of the four categories in the Directory. The fourth category was "mass merchandisers and specialty retailers" which required no card file because its information was drawn from other files in our possession. One file arranged all listings in alphabetical order by company name; the other file arranged the listings in alphabetical order by store location (state and city). Thus, geographical and alphabetical listings were produced for each Directory category for use in further canvassing efforts.

#### Telephone Interviewing and Editing

9. After I culled the prospective listings and organized them into a "prospect file," the months of April, May, June and July of 1983 were spent interviewing by telephone the approximately 7,350 prospects. This was accomplished by a staff which averaged eight employees under my supervision.

10. Each interviewer asked the prospective listing a series of questions from a questionnaire prepared by Michael Lambe. Annexed hereto as Exhibit "C" is a true copy of the questionnaire used by the telephone interviewers.

11. Upon the completion of the telephone interviewing process, Mr. Lambe and I reviewed all of the responses of the prospects to determine which of the listings fit within Plaintiff's criteria for each of the four categories of the Directory. The four categories of the Directory are: 1) Computer Stores; 2) Mass Merchandisers and Specialty Retailers; 3) Office Equipment and Supply Dealers; and 4) Computer and Software Distributors. For a prospective listing to be included in the Directory, its responses to the telephone interviewer must meet the criteria for one of the four categories as set forth below:

a) Computer Stores - criteria:

1. The prospective listing must have a storefront;
2. It must primarily carry personal computers and not mini-computers; and
3. 70% of its computer sales must be made at the retail level.

b) Mass Merchandisers & Specialty Retailers - criteria:

1. Retail storefront; and
2. The store must have a "serious involvement" in selling personal computers rather than a slight involvement.

c) Office Equipment & Supply Dealers - criteria:

1. The dealer must sell personal computers although this need not be its primary source of revenue; and
2. The dealer must sell other office equipment and supplies.

d) Computer & Software Distributors - criteria:

1. The distributor must distribute both personal computers and personal computer products, including software.
2. No more than 30% of its annual sales must be made at the retail level; and
3. It may not be a manufacturer of personal computers.

12. The editing process ultimately resulted in approximately 3,200 listings. This compilation, the result of many months of diligent canvassing and careful screening, represented the final list of computer retailers to be published in the 1983 copyrighted edition of the Directory.

The 1984 through 1986 Editions

13. The production of the 1984 copyrighted edition of the Directory involved procedurally similar canvassing efforts as the previous edition. The first four months of 1984 were devoted to updating the Directory with new listings, confirming the continued validity of the 1983 listings and adding new information for all of the listings.

14. To obtain new listings substantially the same sources which were used in the production of the 1983 edition were once again canvassed. This process took over two months and resulted in 1,500 new prospective listings.

15. Each of the new prospects was mailed a questionnaire. Annexed hereto as Exhibit "D" is a copy of the questionnaire sent to the new prospective listings. This



step was a change from the 1983 procedure by which all prospects were contacted by telephone.

16. If a new prospective listing did not respond to the questionnaire they were contacted and interviewed by telephone. This interview would seek to obtain the same information sought in the mailed questionnaire. The telephone interviewing process spanned the months of February, March and April of 1984.

17. A different mailing to companies listed in the 1983 edition was also made. This mailing sought to verify that the information contained in the 1983 edition was still accurate and to obtain any changes in that information. In addition, new information was also sought to further detail the Directory's listings. Annexed hereto as Exhibit "E" is a copy of the questionnaire sent to the companies listed in the 1983 edition.

18. Finally, those listed companies which did not respond to the mailing were telephoned. As in the case of new prospective listings, these interviews sought the same information sought in the mailing.

19. As the information was received, I would apply the same editing process detailed in paragraph 9, above. That is, I would determine whether the new prospect or previously listed company should be listed in the Directory and, if so, under what category.

20. This procedure resulted in an increase of approximately 600 new actual listings for the 1984 edition.

21. In preparing the 1985 and 1986 Directories, it was necessary to repeat all of the steps involved in preparing the 1984 Directory.

22. Because this affidavit sets forth in explicit step-by-step detail the specific methodology employed by Plaintiff in created its unique compilation comprising the Directory and in order to preserve the effective continued utility of plaintiff's "seeds", Plaintiff has requested that this affidavit and its Exhibits be filed herein under seal *in camera*.

/s/ Victoria M. K. Burdick  
Victoria M. K. Burdick

Sworn to before me this  
30th day of October, 1986

/s/ Rhona Plunka  
Notary Public

(Notary Seal)

(All Exhibits and Certificate of Service  
Omitted in Printing)

---



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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	)	86 Civ.
Plaintiff,	)	AFFIDAVIT OF
-against-	)	LISA B.
CHROMATIC	)	MARGOLIS IN
COMMUNICATIONS	)	SUPPORT OF
ENTERPRISES MICHAEL SHIPP,	)	PLAINTIFF'S
Defendants	)	APPLICATION
	)	FOR A
	)	TEMPORARY
	)	RESTRAINING
	)	ORDER AND
	)	PRELIMINARY
	)	INJUNCTION
<hr/>		
STATE OF CALIFORNIA	)	
COUNTY OF LOS ANGELES	)	

LISA B. MARGOLIS, being duly sworn, deposes and says that:

1. I am an attorney associated with the firm of Finley, Kumble, Wagner, Heine Underberg, Manley,

Myerson & Casey, attorneys for Plaintiff Business Guides, Inc. ("Plaintiff") in the above action. I submit this affidavit in support of Plaintiff's application for a temporary restraining order and preliminary injunction enjoining Defendants' continued infringement of Plaintiff's registered copyright in the "Director of Computer & Software Retailers" (the "Directory").

2. Upon Plaintiff's advice that Defendants were engaged in conduct violative of Plaintiff's copyright in the Directory, I transmitted to Defendant, Chromatic Communications Enterprises, Inc. ("Chromatic"), on or about October 16, 1986, a letter requesting that Defendants cease and desist infringement of Plaintiff's copyright in the Directory, and destroy all materials in their possession derived from Plaintiff's copyrighted Directory. Plaintiff demanded that Defendants respond by October 22, 1986. (A copy of the October 16, 1986 letter is annexed as Exhibit "A").

3. On October 20, 1986, I received a telephone message from John Cornelius, Defendants' attorney. Although I attempted to call Mr. Cornelius on October 21, 1986, I was unable to reach him until October 22, 1986. At that time he advised me that he had not had the time to prepare a written response to my letter but that his client had used only independent sources in preparing his directory and that the[y] had documentation to prove that in the form of telephone bills. On October 24, 1986, I telephone Mr. Cornelius to see if he was authorized to accept service of process on behalf of Chromatic. Mr. Cornelius said that he would have to check with his client. Later that day, he called me and advised me that he was authorized to accept service.

[4] On October 27, 1986 I received a letter from Mr. Cornelius dated October 24, 1986 which was accompanied by an undated letter from Michael Shipp. Michael Shipp's letter stated that Chromatic would continue to publish its directory and that all that he was willing to do was: (1) show plaintiff the documents that he used to compile its directory; and (2) perform a line-by-line comparison of the two directories.

[5] Because I was unable to reach Mr. Cornelius by telephone, I sent a telegram to him on October 30, 1986 to advise him of the filing of this action and the presentment of the various applications herein submitted to the Court. (A copy of Plaintiff's Complaint is annexed as Exhibit "B"). I also advised Mr. Cornelius that although Plaintiff desired to try to resolve the matter without resorting to this Court, it was necessary to file the papers in order to prevent the irreparable injury that would be caused if the matter is not resolved before the Comdex trade show scheduled for November 9, 1986. (A copy of the telegram is annexed as Exhibit "C").

[6] No prior application for the relief requested herein by Plaintiff has been made to this or any other Court.

[7] Plaintiff moves by Order to show Cause because Plaintiff claims imminent danger of irreparable harm and has sought temporary and preliminary injunctive relief.

/s/ Lisa B. Margolis  
LISA B. MARGOLIS

Sworn to before me this 30th  
day of October, 1986.

/s/ Alison L. Dunn  
Notary Public

(Notary Seal)

## EXHIBIT A

FINLEY, KUMBLE, WAGNER, HEINE,  
 UNDERBERG, MANLEY, MYERSON & CASEY  
 A Partnership Including Professional Corporations  
 9400 WILSHIRE BOULEVARD  
 BEVERLY HILLS, CALIFORNIA, 90212

[Additional Letterhead Omitted In Printing]

October 16, 1986

Michael Shipp, President  
 Chromatic Communications, Inc.  
 P. O. Box 3249  
 Walnut Creek, California 94598

Re: *Microleads*

Dear Mr. Shipp:

We represent Business Guides, Inc., which is the publisher of the 1984 through 1986 volumes of the "Directory of Computer & Software Retailers." It has come to their attention that you have published and are promoting and selling the above-referenced directory on diskettes listing the various retail outlets and distributors involved in the sale of computers, software and related products, and that you used our client's directory and the data contained therein in preparing your directory in any manner that violates the copyright laws and constitutes unfair competition. It has also come to their attention that you are misrepresenting the source of your directory information in your promotional materials.

We demand that you acknowledge to us that you will immediately cease and desist marketing the above-referenced directory and destroy all existing diskettes of the directory; that you will immediately cease and desist

promoting the above-referenced directory and destroy all existing promotional materials; that all information received by you as a result of the unlawful use of our client's directory will be destroyed, whether in the form of notes, or otherwise; and that all other papers prepared using information contained in or obtained as a result of our client's directory will be destroyed. We doubt whether, in light of the unlawful use of our client's directory, you can publish any similar directory which is not tainted by these unlawful acts.

FINLEY, KUMBLE, WAGNER, HEINE,  
 UNDERBERG, MANLEY, MYERSON & CASEY

Michael Shipp, President  
 October 16, 1986  
 Page 2

We request a satisfactory answer from you by October 22, 1986, failing which, we have been instructed to take such action as may be required to protect our client's rights.

Very truly yours,

/s/ Lisa B. Margolis  
 Lisa B. Margolis for  
 Finley, Kumble, Wagner,  
 Heine,  
 Underberg, Manley, Myerson  
 & Casey

LBM:jmr  
 cc: Michael A. Bamberger  
 Victoria White

(Exhibits B and C, Certificate of Service Omitted in Printing)

---



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(707) 528-7555  
RICHARD W. FREEMAN, JR.

FINLEY, KUMBLE, WAGNER, HEINE,  
UNDERBERG, MANLEY, MYERSON & CASEY  
9100 Wilshire Boulevard  
Beverly Hills, California 90212  
(213) 550-6100  
MICHAEL D. DEMPSEY  
LISA B. MARGOLIS

Attorneys for Plaintiff  
BUSINESS GUIDES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	)	86 CIV.
Plaintiff,	)	AFFIDAVIT OF
	)	ANDREW
	)	DESARLE
v.	)	IN SUPPORT OF
CHROMATIC	)	PLAINTIFF'S
COMMUNICATIONS	)	APPLICATION
ENTERPRISES, INC., and	)	FOR A
MICHAEL SHIPP,	)	TEMPORARY
Defendants.	)	RESTRAINING
	)	ORDER AND
	)	PRELIMINARY
	)	INJUNCTION

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss:

ANDREW DESARLE, being duly sworn, deposes and  
says:

1. I am the current publisher of Plaintiff Business Guide, Inc.'s ("Plaintiff") "Directory of Computer + Software Retailers" (the "Directory") and have been publisher since January 1986. I have been employed by Plaintiff since 1978. Prior to January 1986 I was employed as Group Director. I submit this affidavit in support of Plaintiff's application for a temporary restraining order and preliminary injunction which, in essence, will prevent Defendants from unlawfully advertising and marketing two similar printed directories and a diskette product pirated from Plaintiff's work and infringing upon Plaintiff's registered copyright in the Directory. I have personal knowledge of the facts set forth herein.

2. Chromatic Communications Enterprises, Inc. ("Chromatic") offers its infringing directory in print and on computer diskettes and advertises its infringing printed directories and its diskette directory at prices substantially lower than the price at which Plaintiff sells its printed and diskette versions of the directory. Pirating permits Chromatic to sell its directory for less. Announcement to Plaintiff's customers that the same compilation is available at such a low price is likely to cause profound irreparable harm to Plaintiff's integrity, its market share and will result in the loss of the valued good will in the directory business built up by Plaintiff for over fifty years. A number of Plaintiff's customers have advised me that they have already purchased Chromatic's pirated Directory instead of Plaintiff's Directory. Chromatic's continued advertising and marketing of its unlawful imitations, and its soliciting of Plaintiff's customers, including its advertising of its directories at the Comdex trade show scheduled for November 9, 1986, will exacerbate

the irreparable harm already suffered by Plaintiff and cause continued irreparable injury to Plaintiff. The Comdex trade show is held semi-annually and is extremely important because it is the largest trade show that exists for the microcomputer marketplace and because it permits publishers such as Plaintiff to advertise its directory to a captive audience. Consequently, allowing Defendants to advertise their pirated diskette and printed directories at Comdex would cause substantial and irreparable harm to Plaintiff.

3. I have been associated with the Plaintiff since January 1986 and have complete supervisory responsibility over all aspects of the research, compilation, marketing and sales of the Directory.

4. The Directory is a listing of over 4,000 retailers and distributors of computer hardware and software in the United States. The Directory is the only "horizontal" compilation (i.e., inclusive of each of the major retailing categories - computer and software stores, mass merchandisers, office equipment and specialty dealers, and distributors) published, and thus represents a unique product in its market.

5. Plaintiff's printed Directory is priced at \$389.00 because it involves substantial initial and continuing research and production costs, including compilation and updating of the extensive information it contains. Plaintiff's diskette version of the Directory is priced at \$1,125.

6. Upon information and belief Chromatic utilized the compilation of information contained in the Directory to prepare its own virtually identical compilation of those same retailers and distributors contained in the Directory.

7. Chromatic has been advertising and selling its printed directories since at least May 1984 and its diskette directory since at least March, 1986 in direct competition with Plaintiff's Directory and its diskette version of the Directory. Chromatic sells its printed and diskette directories at a far lower price than Plaintiff's diskette and printed versions of the Directory (principally because Chromatic does not have to recover from its sales the expense of costs incurred by Plaintiff in the substantial research and preparation of Plaintiff's Directory).

8. Plaintiff's Directory has been appropriately copyrighted, and notice has been printed on all copies of the Directory. Copies of Plaintiff's Copyrights for the Directory for 1984 through 1986 are annexed hereto as Exhibit "A". A copy of the appropriate notice of copyright contained on page 11 of the Directory is annexed as Exhibit "B".

/s/ Andrew DeSarle  
Andrew DeSarle

Sworn to me this 30th day  
of October, 1986.

/s/ Rhona Plunka  
Notary Public

(Notary Seal)

(All Exhibits and Certificate of Service Omitted in Printing)



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3333 MENDOCINO AVENUE  
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RICHARD W. FREEMAN, JR.

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9100 Wilshire Boulevard  
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(213) 550-6100  
MICHAEL D. DEMPSEY, ESQ.  
LISA B. MARGOLIS, ESQ.

Attorneys for Plaintiff  
BUSINESS GUIDES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	)	86 CIV.
	)	AFFIDAVIT OF
Plaintiff,	)	MICHAEL
	)	LAMBE
v.	)	IN SUPPORT OF
CHROMATIC	)	PLAINTIFF'S
COMMUNICATIONS	)	APPLICATION
ENTERPRISES, INC., and	)	FOR A
MICHAEL SHIPP,	)	TEMPORARY
	)	RESTRAINING
Defendants.	)	ORDER AND
	)	PRELIMINARY
	)	INJUNCTION

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

MICHAEL LAMBE, being duly sworn, deposes and  
says:

1. I am the Director of Research at Business Guides, Inc. ("Plaintiff") and submit this affidavit in support of Plaintiff's application for a temporary restraining order and preliminary injunction. The purpose of this affidavit is to detail the extensive planning and costs associated with the production of the 1983 through 1986 copyrighted editions of Plaintiff's "Directory of Computer + Software Retailers" (the "Directory").

2. I have been employed by Plaintiff for 13 years. As the Director of Research, the Associate Director of Research and, prior to these positions, as Executive Editor, one of my responsibilities was to plan and supervise the production of the Directory. In this regard, Ms. Victoria M. K. Burdick reported to me and I, in turn, kept the publisher advised of the Director's progress.

3. When Plaintiff began publishing the Directory in 1983, all of the competitors priced their directories at \$1500 and up, which was far higher than the price of \$350 at which Plaintiff offered its 1983 edition. Plaintiff's Directory is a distinctive product. It offers far more information than any other existing directory for each entry including product lines, computer models, sales, markets served and number of sales persons.

4. The initial planning of the Directory began in June and July of 1982. During this period, I made a general survey of the personal computer industry. My intention was to discover whether a market existed for the sale of the proposed Directory. To this end, I spent many hours reading various trade publications in the computer industry, interviewing manufacturers who might be potential purchasers of the Directory, consulting



with the editor of Plaintiffs own publication "Computer + Software News," and interviewing major retailers and distributors to learn their opinions as to whether the proposed Directory was a useful and marketable publication.

5. I concluded that there was a definite demand for a directory which included all of the different types of retailers in the computer trade, and so informed Mr. Appel, who was then the publisher.

6. Mr. Appel and I then began to plan the production of the project. A budget was set to cover production costs. The information and various categories to be included in the Directory were determined. Questionnaires were prepared for the gathering of information. I consulted with out computer services supplier for the key-punching of the information. A printing company was also contacted. Finally, a publication schedule was prepared and a support staff was hired.

7. Ms. Burdick was assigned the responsibility of supervising the research staff for the identification and telephone interviewing of prospective listings.

8. By July of 1983, Ms. Burdick and her staff had completed questionnaires from over 7,000 prospective listings. Ms. Burdick and I then established certain criteria for each of the four categories to be included in the Directory and determined which of the prospective listings qualified for listing.

9. After the qualified listings were determined, I supervised the preparation of Data Input Forms - the typing of approximately 3,200 listings for keypunching,

the editing of these forms, and the keypunching of the data.

10. Ms. Burdick and I proofread the printouts of the data and I arranged for the printing of the listings. The introduction and cover were prepared and we proofread the galleys and proofs from the printer. Finally, by August 11, 1983, the Directory was published and ready for sale.

11. From the initial planning of the Directory to its ultimate publication date, the project took dozens of persons and 14 months to complete. Approximately \$92,000 was expended in producing the 1983 edition. Although Ms. Burdick supervised the production of the 1984 edition of the Directory, I was responsible for its budget. That edition and its November 1984 update cost approximately \$110,000 to produce

12. I was also responsible for the budget for the 1985 and 1986 editions of the Directory. The 1985 edition and its October and December 1985 update cost approximately \$159,000 to produce and the 1986 edition and its August 1986 update cost approximately \$126,000 to produce.

13. In October 1985, we also began offering the directory on diskette to the general public. The diskette cost \$3,000 to prepare.

/s/ Michael Lambe  
Michael Lambe

Sworn to me this 30th day  
of October, 1986.

/s/ Rhona Plunka  
Notary Public

(Notary Seal)

(Certificate of Service Omitted in Printing)

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JAMES, GACK & FREEMAN  
Richard Freeman, Jr.  
3333 Mendocino Avenue  
Santa Rosa, California 95406  
Tel: (707) 528-7555

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UNDERBERG, MANLEY, MYERSON & CASEY  
9100 Wilshire Boulevard  
Beverly Hills, California 90212  
(213) 550-6100

Attorneys for Plaintiff  
BUSINESS GUIDES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	)	C 86 6164 SC
	)	
Plaintiff,	)	ORDER
	)	ALLOWING THE
vs.	)	SUBMISSION OF
	)	AFFIDAVIT
CHROMATIC	)	UNDER SEAL
COMMUNICATIONS	)	AND IN CAMERA
ENTERPRISES, INC. and	)	
MICHAEL SHIPP,	)	(Filed
	)	NOV 8 1986)
Defendants.	)	

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On Nov. 3, 1986, Plaintiff, Business Guides, Inc.'s Application for submission of Affidavit under seal and *in camera* came on for hearing.

GOOD CAUSE HAVING BEEN SHOWN THEREFORE, IT IS ORDERED, that plaintiff may submit the Affidavit of Victoria M. K. Burdick, under seal and *in camera* and that defendants may examine the affidavit but

they are ordered not to disclose the contents of the affidavit.

DATED: Nov. 3, 1986      /s/ Samuel Conti  
U. S. District Judge

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JAMES, GACK &  
FREEMAN  
3333 Mendocino Avenue  
Santa Rosa, California 95406  
(707) 528-7555  
RICHARD FREEMAN, JR.

SUBMITTED UNDER SEAL  
PURSUANT TO ORDER  
OF COURT ON FILE  
HEREIN

FINLEY, KUMBLE, WAGNER,  
HEINE,  
UNDERBERG, MANLEY,  
MYERSON & CASEY  
9100 Wilshire Boulevard  
Beverly Hills, California 90212  
(213) 550-6100  
MICHAEL D. DEMPSEY  
LISA B. MARGOLIS

Attorneys for Plaintiff(s)  
BUSINESS GUIDES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	)	86 CIV. 6164 SC
Plaintiff,	)	
	)	SUPPLEMENT TO
v.	)	SEALED AFFIDAVIT OF
	)	VICTORIA M. K. BUR-
CHROMATIC	)	DICK IN SUPPORT OF
COMMUNICATIONS	)	PLAINTIFF'S APPLICA-
ENTERPRISES, INC.	)	TION FOR A TEMPOR-
and MICHAEL SHIPP,	)	ARY RESTRAINING
Defendants.	)	ORDER AND PRELIMI-
	)	NARY INJUNCTION

STATE OF NEW YORK      )  
   ) ss:  
COUNTY OF NEW YORK    )

VICTORIA M. K. BURDICK, being duly sworn,  
deposes and says:



1. I am a sales representative at Mail Marketing Resources, which is a division of Business Guides, Inc. ("Plaintiff"), and submit this affidavit in support of Plaintiff's application for a temporary restraining order and preliminary injunction. The purpose of this affidavit is to supply copies of "seeds" as they appear in Plaintiff's "Directory of Computer & Software Retailers" (the "Directory") pursuant to the request of Robert Funsten.

2. Attached hereto as Exhibit "A" are copies of "seeds" from Plaintiff's 1984 edition of the Directory. As shown in my affidavit of October 10, 1986 defendant Chromatic Communications Enterprises, Inc. ("Chromatics") copied this version of the Directory including the "seeds". Attached to that prior affidavit are copies of the same "seeds" as they appear in Chromatic's directories and its diskette.

3. Attached hereto as Exhibit "B" are copies of "seeds" from the 1986 edition of the Directory. As shown in the October 10, 1986 affidavit, Chromatic copied that Directory as well as the "seeds". Attached to the October 10, 1986 affidavit are copies of the "seeds" as they appear in Chromatic's directories and its diskette.

4. In order to preserve the effective continued utility of Plaintiff's "seeds", Plaintiff has requested that this affidavit and its Exhibits be filed herein under seal and *in camera*.

/s/ Victoria M. K. Burdick  
Victoria M. K. Burdick

Sworn to me this 5th day  
of November, 1986

/s/ Grace D'Antoni  
Notary Public

(Notary Seal)

## [Exhibit A]

1984 CHAIN STORE GUIDE® DIRECTORY  
ALABAMA (Cont'd)

		Stores
†	<b>BMTC Systems, Inc.</b> , 113 S. Main Street Telephone: 205 586-1000 Product Lines: Acc; Monitors; Printers; Software (Educational); Storage Devices; Supl; System Units Computer Models: Commodore 64 Number Of Stores: 1 Total Sq. Ft.: 700 Services: Lease Financing Number Of Salespersons: 2 Year Founded: 1982 SID MCDONALD - President, Buyer. DAVID JACOBS - Marketing Mgr.	Arab 1 35016

		1 Store
	<b>Eagle Micro Systems, Inc.</b> , 138 S. Gay St. Telephone: 205 826-3691 Product Lines: Acc; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices; Supl; System Units Computer Models: Corona; KayPro 2, 4, 10 Sales: \$750,000 (1983 Estimated) % Sales: 60 (hardware), 40 (software) Number Of Stores: 1 Projected # Stores: 1 (1/85) Total Sq. Ft.: 3,500 Services: Repair/Educational/On-Site Training/Customized Software/Lease Financing Year Founded: 1981 BILL WOMELDORF - President, Buyer.	Auburn 63830

**Ac3 Computing Products Center**,  
2029 2nd Ave. N. Birmingham  
Telephone: 205 251-4330 35203

5

## 1984 CHAIN STORE GUIDE® DIRECTORY

**Product Lines:** Acc; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices; Supl; System Units

**Computer Models:** Apple IIe, III, Lisa; Epson HX-20, QX-10; Hewlett-Packard HP-41, HP-75C, HP-85A, HP-86, HP-87

**Sales:** \$6,500,000 (1983 Estimated)

**% Sales:** 70 (hardware), 30 (software)

**Number Of Stores:** 5

**Services:** Repair/Educational/On-Site Training/Lease Financing

**Year Founded:** 1980

FRED NUNNELLEY - President.

ROBIN WHITEHEAD - GM.

BARRY ARMSTRONG - Buyer.

	<b>The Computer Shop</b> , 1000 Pike Rd. Birmingham	1
	Telephone: 205 781-0711	35218

**Product Lines:** Acc; Modems; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Storage Devices; System Units

**Computer Models:** Epson HX-20; IBM PC; Sanyo MBC 555

**Sales:** \$400,000 (1983 Estimated)

**Number Of Stores:** 1

**Projected # Stores:** 1 (1/85)

**Services:** On-Site Training/Customized Software/Lease Financing

**Year Founded:** 1979

DANNY BONMAN - President.

† Also Mail Order    ★ Franchise Group Headquarters  
‡ Software Only Store(s)

## 1984 CHAIN STORE GUIDE® DIRECTORY

† **Cost Plus Computer,**  
 244 Golden Crest Dr. Birmingham  
 Telephone: 205 879-5976 35209  
 MAILING ADDRESS: Box 6114  
 Birmingham AL 35209  
**Product Lines:** Acc; Modems; Monitors;  
 Printers; Software (Business); Software (Sys-  
 tems); Storage Devices; Supl; System Units

## CALIFORNIA (Cont'd)

**Waybern Corp. (Continued)**  
 JASON P. GARON - VP, Mktg.  
 MARY PHILLIPS - CFO.  
 RAYMOND CARR - Material Control Mgr.  
 JOAN GROESNER - GM.

**Advanced Technology,**  
 3521 Investment Blvd. Hayward  
 Telephone: 415 785-8346 94545  
**Product Lines:** Modems; Printers  
**Number of Salespersons:** 8  
**Year Founded:** 1972  
 WALTER THOMAS - President, Buyer.

**Basic Systems, Inc.,**  
 230 W. Florence Ave. Inglewood  
 Telephone: 213 673-4300 90501  
**Product Lines:** Acc; Monitors; Printers;  
 Storage Devices, Supl; System Units  
**Sales:** \$6,000,000 (1983 Estimated)  
**% Sales:** 20 (software), 80 (peripherals)  
**Number Of Stores:** 1  
**Trading Area:** US  
**Number Of Salespersons:** 8  
**Year Founded:** 1980  
 ROBERT MORRIS - President, Buyer.  
 ERNIE MERINO - VP.  
 DAVE ELLIS - Sales Mgr, American Interna-  
 tional Distributors.

## 1984 CHAIN STORE GUIDE® DIRECTORY

MICHAEL GEORGOFF - Buyer, American  
 International Distributors.

**Softsel, 546 N. Oak St. Inglewood**  
 Telephone: 213 412-1700 90302  
**Product Lines:** Monitors; Software (Busi-  
 ness); Software (Educational); Software  
 (Entertainment); Software (Game); Software  
 (Personal); Software (Systems)  
**Sales:** \$87,000,000 (1983 Estimated)  
**Trading Area:** US  
**Distribution Center(s):** Atlanta, GA; Chi-  
 cago, IL; Fairfield, NV; Dallas, TX  
**Year Founded:** 1980  
 DAVID WAGMAN - Chairman.  
 BOB LEFF - President, Buyer.  
 DAVID BLUMSTEIN - ExVP, Marketing &  
 Sales.  
 SCOTT HILLMAN - VP, Product Services.  
 JOHN THOMPSON - National Operations  
 Mgr.  
 SPENCER LAYTON - Dir, Product Acquisi-  
 tion.  
 BRUCE CUMMINGS - Dir, Mktg.

**P & O Leasing Inc., 2 Flemming Irvine**  
 Telephone: 714 581-0333 92714  
**Product Lines:** Acc; Printers; Software  
 (Business); Software (Educational); Software  
 (Entertainment); Software (Game); Software  
 (Personal); Software (Systems); Supl  
**Sales:** \$1,000,000 (1983 Estimated)  
**Leases Hardware:** Yes, 20%  
**Trading Area:** US  
**Number Of Salespersons:** 3  
**Year Founded:** 1973  
 D. STARK - President.



## 1984 CHAIN STORE GUIDE® DIRECTORY

**Premier Source Distributing,**

1882 McGaw Irvine 92714

Telephone: 714 261-2011

**Product Lines:** Acc; Modems; Monitors;  
Printers; Software (Business); System Units**% Retailer:** 30**Trading Area:** AZ, CA**Number Of Salespersons:** 11**Year Founded:** 1980

TOM DODGE - President.

VIRGINIA DODGE - VP.

MARVIN MCCURDY - VP, Sales.

DON COLEY - Treas, GM, Buyer.

DON BLEDSOE - Sales Mgr.

**M. P. Systems,** 23341 Del Lago Laguna Hills

Telephone: 714 770-6411 92653

**Product Lines:** Acc; Modems; Monitors;  
Printers; Software (Business); Software (Per-  
sonal); Storage Devices; Supl; System Units**Computer Models:** Columbia Data Products

MPC, VP, 1600 Series; Panasonic

**Sales:** \$3,500,000 (1983 Estimated)**% Sales:** 50 (hardware), 50 (software)**Trading Area:** AR, LA, NM, TX**Distribution Center(s):** Dallas, TX**Number Of Salespersons:** 11**Year Founded:** 1977

JEFF YASSAI - President, Buyer.

CAMRAN MALEK - GM.

LAWRENCE WHITAKER - Sales Mgr.

**Starsoft Corp.,**

4984 El Camino Real # 125

Los Altos

Telephone: 415 965-8000

94022

**Product Lines:** Software (Business)**% Sales:** 100 (software)**Trading Area:** US**Number Of Salespersons:** 6

## COMPUTER + SOFTWARE DISTRIBUTORS™

**Year Founded:** 1982

ELIZABETH SHIRLEY - President, Buyer.

JON RANSOHOFF - VP of Marketing.

**American Computers & Engineers, Inc.,**

2001 S. Barrington, Suite 204 Los Angeles

Telephone: 213 477-6751 90025

**Product Lines:** Acc; Modems; Monitors;  
Printers; Software (Business); Storage  
Devices; Supl; System Units**Computer Models:** Apple IIe, III, Lisa, Mac-  
intosh; CompuPro System 816; Cromemco  
C-10, CS-2, CS-3, System 1; DEC PRO 350,  
Rainbow 100, Rainbow 100+; NEC APC**Sales:** \$4,500,000 (1983 Estimated)**Projected # Stores:** 4 (1/85)**Trading Area:** CA, WA**Number Of Salespersons:** 8**Year Founded:** 1978

GEORGE SAN DIB - President, Buyer.

AZIZ AL-KHAL - VP.

RAMUNE AMBROZADIS - General Mktg.

CAROLE DIB - GM.

CURT ESSEX - Technical Mgr.

JOHN KLAREN - Customer Support.

ABOUD ASSAF - Credit Mgr.

**Kierulff Electronics,**

2585 Commerce Way

Los Angeles

Telephone: 213 725-0325

90040

**Product Lines:** Acc; Modems; Printers; Soft-  
ware (Business); Software (Game); Software  
(Personal); Software (Systems); -Storage  
Devices; Supl; System Units**Computer Models:** Cromemco C-10, CS-0,  
CS-2, CS-3, System 1; TeleVideo TS-802,  
TS-802H, TS-803, TS-806, TS-806H, TS-816,  
1600, 1603, 1605; Texas Instruments Porta-  
ble, Professional

**COMPUTER + SOFTWARE DISTRIBUTORS™**

**Sales:** \$200,000,000 (1983 Estimated - Total Company)  
**Trading Area:** US

**ILLINOIS (Cont'd)****Micro Warehouse, Inc. (Continued)**

**KENT LIPSHULTZ** - VP, Mktg & Technical Support.  
**GINGER MILLS** - Purchasing Agent.

<b>Price Electronics Corp.,</b>	1 Store
204 Carpenter	Wheeling 60090
Telephone: 312 998-6400	
<b>Product Lines:</b> Acc; Modems; Monitors; Printers; Storage Devices; Supl; System Units	
<b>Computer Models:</b> Panasonic	
<b>Sales:</b> \$14,000,000 (1983 Estimated)	
<b>Number Of Stores:</b> 1	
<b>Trading Area:</b> US	
<b>Year Founded:</b> 1975	
<b>MANNY I. PRICE</b> - President, Buyer.	
<b>SARA LEE PRICE</b> - VP.	
<b>STEVE JUSTMAN</b> - Sales Mgr.	

**Sterotronic Industries Inc.,**  
 Wadsworth Rd. & North Ave. Zion  
 Telephone: 312 746-1600 60099  
**Product Lines:** Acc; Modems; Monitors; Printers; Software (Business); Software (Educational); Storage Devices; Supl; System Units  
**Computer Models:** Commodore B Series, CBM-8032, 64; Eagle PC, II, III, IV, 1600 Series  
**Sales:** \$1,300,000 (1983 Estimated)  
**% Sales:** 60 (hardware), 40 (software)

**COMPUTER + SOFTWARE DISTRIBUTORS™**

**Number Of Salespersons:** 6 (4 In-House; 2 Field)

**Year Founded:** 1940

**PAUL G. PETERS** - President.

**BEVERLY PETERS** - VP, Treas.

**FORREST PETERS** - GM, Buyer.

**1984 CHAIN STORE GUIDE® DIRECTORY****MICHIGAN (Cont'd)****Inacomp Computer Center,**

251 N. Telegraph

Pontiac  
 48053

Telephone 313 681-1611

**Product Lines:** Acc; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices; Supl; System Units

**Computer Models:** Apple IIe, Macintosh; DEC; IBM PC, PC-XT, PC jr

**% Sales:** 75 (hardware), 25 (software)

**Leases Hardware:** Yes

**Number Of Stores:** 1 (1/85)

**Total Sq. Ft.:** 2,567

**Franchise Group Hdqs:** Inacomp Computer, Troy, MI

**Services:** Repair/Educational/On-Site Training/Customized Software/Lease Financing

**Year Founded:** 1983

**HARRIET MACDOWELL** - President.

**EDWARD MACDOWELL** - VP, GM, Buyer.

**ROBERT MACDOWELL** - Technical Mgr.

## 1984 CHAIN STORE GUIDE® DIRECTORY

**Computerland,** 1 Store  
 3545 Bay Rd. Saginaw 48603  
 Telephone: 517 790-0511  
**Product Lines:** Acc; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices; Supl; System Units  
**Computer Models:** Compaq; DEC Rainbow 100; Rainbow 100+; Epson HX-20; IBM PC, PC-XT; Texas Instruments Professional  
**Sales:** \$750,000 (1983 Estimated)  
**Number Of Stores:** 1  
**Total Sq. Ft.:** 3,000  
**Franchise Group Hdqs:** Computerland, Hayward, CA  
**Private Label:** Software, Supplies, Accessories  
**Services:** Repair/Educational/On-Site Training/Customized Software/Lease Financing  
**Year Founded:** 1983  
**CLARICE O. TOSHACH** - President, Buyer.  
**DANIEL TOSHACH** - VP.

**Inacomp Computer Center,** 2  
 3580 Bay Rd. Saginaw 48603  
 Telephone: 517 790-1360  
**Product Lines:** Acc; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices; Supl; System Units  
**Computer Models:** Apple IIe, III, Lisa, Mac-Intosh; Compaq Plus, Portable; DEC Rainbow 100; IBM PC, PC-XT; North Star Advantage, Horizon

## 1984 CHAIN STORE GUIDE® DIRECTORY

**Sales:** \$1,300,000 (1983 Estimated)  
**% Sales:** 70 (hardware), 30 (software)  
**Leases Hardware:** Yes, 10%  
**Number Of Stores:** 2  
**Projected # Stores:** 2 (1/85)  
**Franchise Group Hdqs:** Inacomp Computer, Troy, MI  
**Services:** Repair/Educational/On-Site Training/Lease Financing  
**Year Founded:** 1977  
**MICHAEL PREMO** - President, GM.  
**RICHARD PREMO** - Marketing Mgr.  
**WILLIAM M. SCHULTZ** - Sales Mgr, Buyer.  
**DAN MEEKER** - Technical Mgr.

†‡ **The Listening Post and Book Store,** 1  
 3097 Bay Plaza Saginaw 48604  
 Telephone: 517 790-0140  
**Product Lines:** Acc; Books; Modems; Software (Business); Software (Educational); Software (Entertainment); Software (Personal)  
**% Sales:** 65 (hardware), 35 (software)  
**Number Of Stores:** 1

## COMPUTER STORES™

## NEW JERSEY (Cont'd)

**Scarborough Video (Continued)**  
**Computer Models:** Atari 400, 800, 1200  
**Number Of Stores:** 2  
**Services:** Educational/On-Site Training  
**Year Founded:** 1976  
**ROBERT MARINO** - President, Buyer  
**R. YOUNG** - VP.

† Also Mail Order    ★ Franchise Group Headquarters  
 ‡ Software Only Store(s)



## COMPUTER STORES™

**Video Fun, 1601 Rte. 22** Watchung 1  
 Telephone: 201 757-7988 07060  
**Product Lines:** Acc; Game Hardware; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Systems); Storage Devices; System Units  
**Computer Models:** Atari 600XL, 800XL; Commodore VIC-20, 64  
**Sales:** \$350,000 (1983 Estimated)  
**Number Of Stores:** 1  
**Total Sq. Ft.:** 256  
**Year Founded:** 1982  
 ROBERTA REIS - Owner, Buyer.  
 BETH REIS - Mgr.

**Computer Pros, West Belt Mall** Wayne 1  
 Telephone: 201 256-7070 07470  
**Product Lines:** Acc; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Personal); Storage Devices; Supl; System Units  
**Computer Models:** Apple II, ILe, III, Lisa, Mac-Intosh; Epson HX-20, QX-10; North Star Advantage, Horizon  
**% Sales:** 65 (hardware), 30 (software)  
**Leases Hardware:** Yes, 5%  
**Number Of Stores:** 1  
**Projected # Stores:** 3 (1/85)  
**Total Sq. Ft.:** 1,800  
**Private Label:** Software, Supplies  
**Services:** Repair/Educational/On-Site Training/Customized Software/Lease Financing  
**Year Founded:** 1982  
 JOSEPH G. GUIDER - President.  
 ALLAN J. BARR - Marketing Mgr, Sales Mgr.  
 S. K. CRIMINNIS - Buyer.

## COMPUTER STORES™

**SST Computer Center, 1581 Rte. 23** Wayne 2  
 Telephone: 201 575-2502 07470  
**Product Lines:** Acc; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Personal); Software (Systems); Storage Devices; Supl; System Units  
**Computer Models:** Eagle PC; Epson HX-20, QX-10; Hewlett-Packard HP-150; KayPro 2, 4, 10; Sanyo MBC-550, MBC 555  
**Sales:** \$300,000 (1983 Estimated)  
**% Sales:** 80 (hardware), 20 (software)  
**Number Of Stores:** 2  
**Projected # Stores:** 4 (1/85)  
**Total Sq. Ft.:** 500  
**Services:** Repair/Educational/On-Site Training/Customized Software  
**Year Founded:** 1977  
 ALVIN CHAI - President.  
 NORMAN ZACHER - Store Operations Mgr, Buyer.

## COMPUTER STORES™

† **Computer Discount of America,** 3 Stores  
 15 Marshal Hill Rd. West Milford 07480  
 Telephone: 201 728-8080  
**Product Lines:** Acc; Modems; Monitors;  
 Printers; Software (Business); Software  
 (Educational); Software (Entertainment);  
 Software (Game); Software (Personal); Stor-  
 age Devices; Supl; System Units  
**Computer Models:** Apple IIe, III, Macintosh;  
 Atari 400, 800, 800XL; Corona PC, PC-2;  
 Eagle II, III, IV; Epson HX-20, QX-10; Frank-  
 lin Ace 1000, Ace 1200; Radio Shack TRS-80  
 Model I, TRS-80 Model II, TRS-80 Model III  
**Sales:** \$5,000,000 (1982 Estimated)  
**% Sales:** 80 (hardware), 20 (software)  
**% Mail Order:** 25  
**Number Of Stores:** 3  
**Projected # Stores:** 6 (1/85)  
**Private Label:** Software, Supplies  
**Services:** Repair/Educational/On-Site  
 Training/Lease Financing  
**Year Founded:** 1979  
 JOSEPH RUSSO - President.  
 MIKE ANDRES - Store Operations Mgr,  
 Buyer.

## 1984 CHAIN STORE GUIDE® DIRECTORY

**Computer Dimensions,** 1  
 116 Elm Street Westfield  
 Telephone: 201 232-8300 07090  
**Product Lines:** Acc; Modems; Monitors;  
 Printers; Software (Business); Software (Educa-  
 tional); Software (Entertainment); Software  
 (Game); Software (Personal); Software (Sys-  
 tems); Storage Devices; Supl; System Units

† Also Mail Order ★ Franchise Group Headquarters  
 ‡ Software Only Store(s)

## 1984 CHAIN STORE GUIDE® DIRECTORY

**Computer Models:** Apple IIe; Atari 400, 800,  
 1200, Commodore VIC-20; 64; Timex Sin-  
 clair  
**Sales:** \$300,000 (1983 Estimated)  
**% Sales:** 70 (hardware), 30 (software)  
**Number Of Stores:** 1  
**Projected # Stores:** 1 (1/85)  
**Total Sq. Ft.:** 1,800  
**Private Label:** Software  
**Services:** Repair/Educational/On-Site  
 Training/Customized Software  
**Year Founded:** 1981  
 JOYCE LIPSON - President  
 STAN LIPSON - GM, Buyer.

**Entre Computer Center,** 1  
 520 South Ave. W Westfield  
 Telephone: 201 654-3110 07090  
**Product Lines:** Acc; Modems; Monitors;  
 Printers; Software (Business); Software  
 (Educational); Software (Entertainment);  
 Software (Personal); Software (Systems);  
 Storage Devices; Supl; System Units  
**Computer Models:** Compaq Plus, Portable;  
 DEC Rainbow 100, Rainbow 100+; Grid  
 Compass; TeleVideo TS-802, TS-802H,  
 TS-803, TS-806, TS-806H, TS-816, 1600, 1603,  
 1605  
**Sales:** \$2,500,000 (1983 Estimated)  
**% Sales:** 60 (hardware), 40 (software)  
**Leases Hardware:** Yes, 20%  
**Number Of Stores:** 1  
**Projected # Stores:** 1 (1/85)  
**Franchise Group Hdqs:** Entre Computer  
 Centers, Inc., Vienna, VA  
**Services:** Repair/Educational/On-Site  
 Training/Lease Financing  
**Year Founded:** 1983  
 JOHN HOWLETT - President, Buyer.  
 JOHN HADLEY - Sales Mgr.



## 1984 CHAIN STORE GUIDE® DIRECTORY

**Yudin's, Inc.**, 332 Greenwood Ave. Wyckoff 1  
 Telephone: 201 891-3111 07481  
**Product Lines:** Acc; Books; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Storage Devices; Supl; System Units  
**Computer Models:** Atari 800, 1200XL; Columbia Data Products 1600 Series; Commodore 64; Epson HX-20, QX-10; Franklin Ace 1000, Ace 1200  
**Sales:** \$1,000,000 (1983 Estimated)  
**Leases Hardware:** Yes, 2%  
**Number Of Stores:** 1

## COMPUTER STORES™

## NEW YORK (Cont'd)

**NFR Computer Room**, 3 Stores  
 87-32 253rd St. Bellerose 11426  
 Telephone: Unpublished  
**Product Lines:** Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices; Supl; System Units  
**Computer Models:** Commodore VIC-20  
**Sales:** \$2,600,000 (1983 Estimated)  
**% Sales:** 75 (hardware), 25 (software)  
**Number Of Stores:** 3  
**Projected # Stores:** 3 (1/85)  
**Private Label:** Software, Supplies  
**Services:** Repair/Educational/Hot-Line/On-Site Training  
**Year Founded:** 1981  
**NICK ROSSINI** - President, Buyer.

† Also Mail Order ★ Franchise Group Headquarters  
 ‡ Software Only Store(s)

## COMPUTER STORES™

† **Bi-Tech Computer Stores**, 2  
 10 Carlough Road Bohemia  
 Telephone: 516 567-8155 11716  
**Product Lines:** Acc; Books; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices; Supl; System Units  
**Computer Models:** Epson HX-20; Radio Shack TRS-80 Model 4; Sanyo MBC-550  
**% Mail Order:** 40  
**Number Of Stores:** 2  
**Projected # Stores:** 4 (1/85)  
**Total Sq. Ft.:** 800  
**Private Label:** Software  
**Services:** Repair/Lease Financing/Customized Software/Hot-Line/On-Site Training  
**Year Founded:** 1976  
**THOMAS VANDE-STOUWE** - Partner, President, Buyer.  
**AL ROSEN** - Partner.

† **Computer Wholesale**, P.O. Box 150 Brewerton 1  
 Telephone: 315 472-3055 13029  
**Product Lines:** Modems; Monitors; Software (Business); Software (Entertainment); Software (Personal); System Units  
**Computer Models:** Cromemco C-10, CS-2, CS-3, System 1; Morrow Decision, Micro-Decision, Micro-Decision MD2; Zenith Z89, Z90, Z100 Series  
**Sales:** \$2,000,000 (1983 Estimated)  
**% Sales:** 70 (hardware), 30 (software)  
**% Mail Order:** 65  
**Number Of Stores:** 1  
**Projected # Stores:** 1 (1/85)  
**Number Of Salespersons:** 4  
**Year Founded:** 1979  
**LARRY DANIELLO** - President.  
**CARLA MAURO** - Buyer.



## COMPUTER STORES™

**Computer Soft Center**, 92B Main St. Brewster 1  
 Telephone: 914 279-5001 10509  
**Product Lines:** Acc; Modems; Monitors;  
 Printers; Software (Business); Software  
 (Educational); Software (Entertainment);  
 Software (Personal); Software (Systems);  
 Storage Devices; Supl  
**Computer Models:** Commodore VIC-20, 64;  
 Franklin Ace 1000, Ace 1200  
**% Sales:** 40 (hardware), 60 (software)  
**Number Of Stores:** 1  
**Total Sq. Ft.:** 4,500  
**Services:** Repair/Educational/On-Site  
 Training/Customized Software  
**Year Founded:** 1982  
**MAT FERNANDOUS** - President, GM, Mar-  
 keting, Sales, Adv Mgr, Buyer.

[Exhibit B]

## 1986 CHAIN STORE GUIDE® DIRECTORY

## WASHINGTON (Cont'd)

- **Computerland**, 1808 136th Place N.E. 10  
 Suite 3 Bellevue  
 Telephone: 206 451-7700 98005  
**Product Lines:** Computer Acc; Computer  
 Supl; Modems; Monitors; Printers; Software  
 (Business); Software (Personal); Software  
 (Systems); Storage Devices; System Units  
**Computer Models:** Commodore Amiga;  
 Compaq Plus, Portable, 286 Series; Hewlett-  
 Packard; IBM PC, PC-AT; PC-XT, Portable  
**% Sales:** 60 (hardware), 20 (software), 20  
 (peripherals)  
**% Of Business:** 70% Walk-in; 30% Outside  
 Sales

† Also Mail Order ★ Franchise Group Headquarters  
 ‡ Software Only Store(s)

## 1986 CHAIN STORE GUIDE® DIRECTORY

**Markets Served:** Accounting-General  
**Number Of Stores:** 10  
**Total Sq. Ft.:** 52,000  
**Franchise Group Hdqs:** Computerland,  
 Hayward, CA  
**Private Label:** Software, Supplies  
**Services:** Repair/Educational/On-Site  
 Training/Customized Software/Hot-Line/  
 Lease Financing  
**Year Founded:** 1978  
**JACK HOOPER** - Chairman.  
**BRUCE LOFTEN** - Vice Chairman.  
**DENNIS OLIN** - Vice Chairman.  
**PHILLIP HOOPER** - President.  
**ELIZABETH JOHNSON** - General Buyer.

**Computers & Applications**, 1 Store  
 10623 NE 8th St. Bellevue 98004  
 Telephone: 206 451-8077  
**Product Lines:** Books; Computer Acc; Com-  
 puter Supl; Modems; Monitors; Printers;  
 Storage Devices; System Units  
**Computer Models:** Compaq Deskpro, Plus,  
 Portable, 286 Series; Epson QX-16; IBM PC,  
 PC-AT, PC-XT; KayPro 10; Olivetti M24;  
 Zenith Transportable, Z150  
**% Sales:** 60 (hardware), 10 (software), 30  
 (peripherals)  
**Number Of Stores:** 1  
**Total Sq. Ft.:** 2,500  
**Private Label:** Software, Supplies, Accesso-  
 ries, Peripherals  
**Services:** Repair/Educational/On-Site  
 Training/Customized Software/Lease  
 Financing  
**Year Founded:** 1982  
**TELUNG CHANG** - President, General Buyer.  
**DAVID CHOY** - Mgr, Retail Sales.  
**JOHN CLEVELAND** - Service Mgr.

## 1986 CHAIN STORE GUIDE® DIRECTORY

- **Computersource**, 14150 N.E. 20th St. Bellevue 1  
Telephone 206 643-7100 98007  
**Product Lines:** Books; Computer Acc; Computer Supl; Modems; Monitors; Printers; Software (Business); Software (Personal); Software (Systems); Storage Devices; System Units  
**Computer Models:** Hewlett-Packard HP-85, HP-85B, HP-86, HP-86B, HP-207, Portable, Portable Plus  
**Sales:** \$2,300,000 (1985 Estimated)  
**% Sales:** 65 (hardware), 15 (software), 20 (peripherals)  
**Number Of Stores:** 1  
**Projected # Stores:** 1 (3/87)  
**Total Sq. Ft.:** 5,000  
**Private Label:** Software  
**Services:** Customized Software/Hardware Enhancement/On-Site Training/Consulting/Educational  
**Year Founded:** 1983  
K. D. TWETON - President, General Buyer.  
JIM WEATHERBIE - VP.  
LEE TWETON - Mgr, Operations.  
GEORGE DART - Mgr, Sales.

## COMPUTER STORES™

## MICHIGAN (Cont'd)

- Inacomp Computer Center** (Continued)  
EDWARD MACDOWELL - VP, GM, Buyer  
All Lines.  
ROBERT MACDOWELL - Technical Mgr.  
DIANE KWIATOWSKI - Store Mgr.

† Also Mail Order    ★ Franchise Group Headquarters  
‡ Software Only Store(s)    ● VAR Activity

## COMPUTER STORES™

- Computerland**, 2 Stores  
3545 Bay Rd. Saginaw 48603  
Telephone: 517 790-0511  
**Product Lines:** Computer Acc; Computer Supl; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices; System Units  
**Computer Models:** Apple IIC, IIE, Macintosh; AT&T PC, PC 6300, 7300; Compaq Deskpro, Plus, Portable, 286 Series; IBM PC, PC-AT, PC-XT, Portable  
**Sales:** \$2,500,000 (1985 Estimated)  
**% Sales:** 60 (hardware), 40 (software)  
**% Of Business:** 20% Walk-in, 80% Outside Sales  
**Number Of Stores:** 2  
**Total Sq. Ft.:** 3,000  
**Franchise Group Hdqs:** Computerland, Hayward, CA  
**Private Label:** Software, Supplies, Accessories  
**Services:** Repair/Educational/On-Site Training/Lease Financing  
**Number Of Salespersons:** 6 (3 In-House; 3 Field)  
**Year Founded:** 1983  
CLARICE O. TOSHACH - President, General Buyer.  
DANIEL TOSHACH - VP.

- **Inacomp Computer Center**, 5  
3580 Bay Rd. Saginaw  
Telephone: 517 790-1360 48603  
**Product Lines:** Computer Acc; Computer Supl; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices; System Units

## COMPUTER STORES™

**Computer Models:** Apple IIC, IIE, Macintosh, Macintosh Plus; Compaq Deskpro, Plus, Portable, 286 Series; Franklin Ace 2000; Hewlett-Packard HP-85, HP-85B, HP-86, HP-86B, HP-207; IBM PC, PC-AT, PC-XT, Portable; Zenith PC-AT

**Sales:** \$9,000,000 (1985 Estimated)

**% Sales:** 60 (hardware), 25 (software), 15 (peripherals)

**% Of Business:** 70% Walk-in; 30% Outside Sales

**Markets Served:** Legal; Medical Practitioner

**Number Of Stores:** 5 (5 Franchised)

**Projected # Stores:** 5 (3/87)

**Total Sq. Ft.:** 16,000

**Franchise Group Hdqs:** Inacomp Computer, Troy, MI

**Services:** Repair/Educational/On-Site Training/Lease Financing/Consulting/Hardware Enhancement/Support

**Number Of Salespersons:** 20 (16 In-House; 4 Field)

**Year Founded:** 1978

**PHIL BRZEZINSKI** - CFO.

**MICHAEL PREMO** - President.

**RICHARD PREMO** - VP, Sales.

**GEORGE ATKINS** - VP, Satellites.

**WILLIAM M. SCHULTZ** - Mgr, Sales.

**DAN MEEKER** - Technical Mgr.

- **Computerland,**  
22000 Greater Mack Ave. St. Clair Shores  
Telephone: 313 772-6540 48080  
**Product Lines:** Books; Computer Acc; Computer Supl; Modems; Monitors; Printers;

† Also Mail Order ★ Franchise Group Headquarters  
‡ Software Only Store(s)

## COMPUTER STORES™

Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices

**Computer Models:** Apple IIC, IIE, Macintosh; Compaq Deskpro, Plus, Portable, 286 Series; IBM PC, PC-AT, PC-XT, Portable; Leading Edge; Panasonic

**Sales:** \$4,500,000 (1985 2)

**% Sales:** 60 (hardware), 10 (software), 30 (peripherals)

**Markets Served:** Legal

(Certificate of Service  
Omitted in Printing)

† Also Mail Order ★ Franchise Group Headquarters  
‡ Software Only Store(s)



JAMES, GACK & FREEMAN

Richard Freeman, Jr.

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Beverly Hills, California 90212

(213) 550-6100

Attorneys for Plaintiff

BUSINESS GUIDES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	)	C866164SC
	)	
Plaintiff,	)	ORDER
	)	ALLOWING THE
vs.	)	SUBMISSION OF
	)	DECLARATION
CHROMATIC	)	UNDER SEAL
COMMUNICATIONS	)	AND IN CAMERA
ENTERPRISES, INC. and	)	
MICHAEL SHIPP,	)	(Filed
	)	NOV 7 1986)
Defendants.	)	

On November 7, 1986, Plaintiff, Business Guides, Inc.'s Application for Submission of Declaration Under Seal and *In Camera* came on for hearing.

GOOD CAUSE HAVING BEEN SHOWN THEREFORE, IT IS ORDERED, that plaintiff may submit the Declaration of Michael Lambe, under seal and *in camera* and that defendants may examine the declaration but

they are ordered not to disclose the contents of the declaration.

DATED: November 7, 1986

/s/ Samuel Conti  
U. S. District Judge

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MICHAEL D. DEMPSEY

LISA B. MARGOLIS

Attorneys for Plaintiff

BUSINESS GUIDES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	)	Case No.
Plaintiff,	)	C866164SC
v.	)	DECLARATION OF
CHROMATIC	)	MICHAEL LAMBE IN
COMMUNICATIONS	)	SUPPORT OF PLAIN-
ENTERPRISES, INC. and	)	TIFFS' APPLICATION
MICHAEL SHIPP,	)	FOR A TEMPORARY
Defendants.	)	RESTRAINING ORDER
	)	AND FOR PRELIMI-
	)	NARY INJUNCTION
	)	(Filed
	)	NOV 7 1986)

I, Michael Lambe, declare as follows:

1. I am the Director of Research at Business Guides, Inc. ("Plaintiff") and submit this Declaration in Support of Plaintiff's Application for a Temporary

Restraining Order and Preliminary Injunction. The purpose of this Declaration is to explain how Plaintiff altered data to produce means of monitoring use of copyrighted information - i.e. "seeds." The "seeds" appear in Plaintiff's "Directory of Computer & Software Retailers" (the "Directory"). In the sealed Affidavit of Victoria M.K. Burdick and the supplement to that Affidavit which were previously submitted in this case, Ms. Burdick explained that Defendants had copied the directory including the "seeds". Attached to that Affidavit and the supplement were copies of the seeded entries as they appear in Defendants' directories and diskette, as well as copies of the seeded entries as they appear in the Directory. Below I will explain how Plaintiff altered the entries in order to detect infringements of its copyright.

2. One of the seeded entries that the Defendants copied from Plaintiff's Directory and which is contained in Defendants' diskette is for: Computers & Applications, telephone (206) 451-8077, 10623 N.E. 8th Street, Bellevue, Washington, Store Manager, David Choy. Plaintiff altered that entry by misspelling Mr. Choy's name. The correct spelling of Mr. Choy's name is not Choy, but Choi. This spelling alteration appears in both the 1986 edition of the Directory as well as Defendants' diskette.

3. Another seeded entry is for Computerland, telephone (517) 790-0511, 3545 Bay Road, Saginaw, Michigan, Store Manager, D. Hamel. The address of that entry has been altered. The correct address is not 3545 Bay Road, but 3845 Bay Road. This alteration appears in Defendants' diskette, and Defendants' 1985 edition of "The Directory of Microcomputer Retailers" as well as in the 1984 and 1986 editions of the Directory.

4. Another seeded entry is for Eagle Micro Systems, 138 S. Gray Street, Auburn, Alabama, 63830. The seeded entry appeared in the 1984 edition of the Directory. Plaintiff altered the zip code. The correct zip code is not 63830 but 36850. Defendants copied this seed in the 1985 edition of "The Directory of Microcomputer Retailers." Although they corrected the first two digits, they neglected to correct the fourth digit.

5. Another seeded entry is for Computer Discount of America, 31 Marshall Hill Road, West Milford, New Jersey, 07480. Plaintiff altered the name of the store in its Directory. The correct name is not Computer Discount of America but Computer Discount of New Jersey. This altered name appears in the 1984 edition of the Directory and in Defendants' 1985 edition of "The Directory of Microcomputer Retailers".

6. Another altered entry is for Premier Source Distributing, Inc., 1882 McGaw Avenue, P.O. Box 16279, Irvine, California, 92714, Sales Manager, Donelly Bledsoe. Plaintiff altered the spelling of Mr. Bledsoe's name. The correct spelling is Blodsoe and not Bledsoe. This altered entry appears in the 1984 and 1986 editions of the Directory and in Defendants' 1985 edition of "The Personal Computer - An Industry Source Book".

7. Another altered entry is for Price Electronics Corp., 204 Carpenter, Wheeling, Illinois, 60090. Plaintiff altered the address. The correct address is 1813 Elmdale Avenue, Glenview, Illinois, 60025. This altered entry appears in the 1984 edition of the Directory and Defendants' 1985 edition of "The Personal Computer - An Industry Source Book."

8. Another seeded entry is for NFR Computer Room, 87-32 253rd Third Street, Bellrose, New York 11426. Plaintiff invented this false entry. The company does not exist at all. This false entry appears in Plaintiff's 1984 edition of the Directory and in Defendants' 1985 edition of "The Personal computer - An Industry Source Book."

9. In order to preserve the effective continued utility of Plaintiff's "seeds", Plaintiff requests that this Declaration be filed herein under seal and *in camera*.

10. I declare under penalty of perjury, under the laws of the United States and the laws of the states of California and New York, that the foregoing is true and correct.

DATED: November 7, 1986

/s/ Michael Lambe  
Michael Lambe

(Exhibits and Certificate of Service  
Omitted in Printing)



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Attorneys for Finley, Kumble, Wagner, Heine,  
 Underberg, Manley, Myerson & Casey.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	) Case No.
Plaintiff,	) C 86-6164 SC
vs.	) DECLARATION
CHROMATIC	) OF MICHAEL D.
COMMUNICATIONS	) DEMPSEY
ENTERPRISES, INC. and	)
MICHAEL SHIPP,	)
Defendants.	)

DECLARATION OF MICHAEL D. DEMPSEY

I, MICHAEL D. DEMPSEY, declare:

1. My name is Michael D. Dempsey. Except as to the matters set forth herein on information and belief, I make this declaration of my own personal knowledge. Except as to the matters set forth herein on information and belief, if I was called upon to testify in open court concerning the matters set forth herein, I could do so of my own personal knowledge. As to the matters set forth

herein on information and belief, I am informed and believe that they are true.

2. I am an attorney admitted to practice law before the courts of the State of California, the United States District Courts for the Northern, Central and Southern Districts of California, the United States Court of Appeals, Ninth Circuit, and the United States Supreme Court. I also have been admitted pro hac vice before the United States District Courts for the District of Montana, the Southern District of New York and the Western District of Missouri.

3. I am a partner in the law firm of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, attorneys for plaintiff Business Guides, Inc. My business address is 9100 Wilshire Boulevard, Beverly Hills, California 90212, telephone number (213) 550-6100.

4. I make this declaration in connection with the order of the United States District Court that the Magistrate conduct an inquiry into the preparation of sealed declarations filed in the litigation known as *Business Guides, Inc. v. Chromatic Communications, Inc., et al.*, U. S. D. C. Case No. C-86-6164 SC (the "Lawsuit"). In the Lawsuit, Business Guides, Inc., seeks damages and injunctive relief because the defendants infringed plaintiff's copyright in a directory used in the micro-computer industry. At the time of filing the Lawsuit and at the time of preparation of the sealed declarations, the primary evidence of infringement was the appearance in the defendants' directory of seeded directory entries that had been copied from the plaintiff's copyrighted directory.

5. I believe that the lawsuit was based on reasonable inquiry and is well grounded in fact. The ability of our client, the plaintiff in the Lawsuit, to prevail in the Lawsuit and to prevail on the application for a temporary restraining order and preliminary injunction depended on the seeds. The evidence concerning the seeds to be considered in connection with the application for a temporary restraining order and a preliminary injunction had to be in declarations or affidavits filed by our client. For the reasons set forth in this declaration, I believe that our inquiry into the content of the sealed declarations was reasonable. Although I was not present during the November 7, 1986, hearing when the court stated that it believed that there were errors of fact in some of the sealed declarations, I have been told that the court believes that there are errors of fact. I also have been told that the court believes that at least two of the seeds described in the sealed declarations and that were set forth in the plaintiff's copyrighted work so that plaintiff could police potential infringement of its work, appear in the defendants' infringing work. My review of the sealed declarations indicates that at least one of the seeds that appears in the defendants' infringing work is a wholly fictitious company name invented by the plaintiff, including the home address of one of the plaintiff's employees as the purported address of the fictitious company. If the defendants did not copy this from the plaintiff's work, then where did they get it? Even if there are errors of fact in some of the sealed declarations, the defendant's use of this seed, alone, indicates copying.

6. There are two basic reasons why I believe that we conducted a reasonable inquiry into the Lawsuit and

the sealed declarations. The first is that it was reasonable to rely on our client, in view of my information concerning our client's experience and sophistication in protecting its directories against infringers and in successfully pursuing infringement litigation. The second is the appearance in the defendants' infringing work of the wholly fictitious seed invented by the plaintiff, plus items listed in the Bamberger declaration.

7. I am informed and believe that our client, both in its present business form and in its predecessor business form, has extensive experience over the last forty years in the use of seeds to protect its copyrighted directories. I also am informed and believe that the very seed list as issue in this litigation was used by our client in successfully proving that a Xerox Corporation subsidiary copied some or all of the same business guide of our client that is at issue in this litigation, and that as a result of our client's use of that seed list in its litigation against the Xerox Corporation subsidiary, our client was paid a substantial sum of money in damages, attorneys fees and costs. As set forth in more detail in this declaration, I believe that the inquiry concerning the seed list was reasonable, that the prior successful use of this same seed list in other litigation is an indication that the Lawsuit is well grounded in fact, and that what I understand to be the court's finding that at least two of the six seeds at issue were copied by the defendants from the plaintiff's protected directory also indicates that the Lawsuit is well grounded in fact.

8. I am informed that seeding is widely used by directory publishers to monitor the usage of their



copyrighted products. I am informed that there are two types of seeds:

a. *Seeded companies.* As I understand it, a seeded company is a totally fictitious listing, usually with the address of a private residence of an employee given as the purported address of the seeded company.

b. *Seeded Names and Addresses.* My understanding is that an otherwise accurate listing of an existing company can be seeded by the directory publisher by making a slight and hopefully inconsequential alteration in a name or address. For instance, the name Smith might be spelled by the directory publisher as Smyth.

9. Before October of 1986, I had done no work for our firm's client, Business Guides, Inc. On Friday, October 24, I received a telephone call from Lisa Margolis, another of the attorneys in our firm's Beverly Hills office. She told me that Michael Bamberger, a partner in our New York office, had asked our office to prepare, file and serve in the United States District Court for the Northern District of California a complaint by Business Guides, Inc. against Chromatic Communications, Inc., and others for infringement of our client's copyright in its directory.

10. Ms. Margolis told me that the complaint was to be based on the defendants' copying of our client's copyrighted computer industry directory. She told me that the infringement had just been discovered, that the defendants had not responded to a cease and desist letter, and that the infringement had to be enjoined before an important industry trade show, Comdex, started on Sunday, November 9. Ms. Margolis asked me whether I would

review the draft papers that she had prepared and participate in a telephone conference call with our client and with Mr. Bamberger. I agreed to do so.

11. I spoke to Ms. Margolis by telephone several times over the weekend of October 25, concerning her preliminary work in preparing the Lawsuit. On October 27, I reviewed the initial drafts of the papers prepared by Ms. Margolis. I learned that she had used as a model papers that has been prepared by another of our attorneys, Stuart K. Lesansky, for filing in the United States District Court for the Southern District of New York. Mr. Lesansky had worked in our New York office for several years and transferred to our Beverly Hills office in 1985. My review of the papers prepared by Mr. Lesansky for filing in the United States District Court For The Southern District of New York disclosed that they had been prepared on behalf of our client, Business Guides, Inc., against a subsidiary of Xerox Corporation. On October 27 or 28, I asked Mr. Lesansky what the result had been in the New York litigation. He told me that litigation was based on seeds inserted in one of our client's copyrighted directories being found in a directory published by a Xerox Corporation subsidiary, that because of the seeds the defendant in that litigation was forced to concede copying and infringement, and that in order to settle that litigation, the Xerox Corporation subsidiary paid Business Guides, Inc., a substantial sum in damages and attorneys fees, and agreed to stop publication of the allegedly infringing work. I later learned that our client's seeds that appeared in the infringing publication by the Xerox subsidiary came from the same seed list at issue in this litigation. When I read that seed list, I saw the seeded



entries appearing in the infringing publication of Chromatic Communications, Inc.

12. The draft papers I reviewed for submission in *Business Guides, Inc. vs. Chromatic Communications, Inc., et al.*, included a draft complaint, application for temporary restraining order, temporary restraining order, preliminary injunction and points and authorities. I told Ms. Margolis that my experience in matters of this type was that the chance of obtaining a temporary restraining and a preliminary injunction depended on the affidavits or declarations filed in support of the application. I told her that affidavits or declarations would have to be prepared for execution by one or more employees or officers of Business Guides, Inc., and that the declarations or affidavits would have to specifically set forth each and every item of proof that Business Guides, Inc., believed tended to establish that the defendants had copied the protected directory.

13. On October 27 Ms. Margolis and I had a telephone conversation with Mr. Bamberger and with our client. I told Mr. Bamberger and our client that the chance that Business Guides, Inc., would be awarded a temporary restraining order and a preliminary injunction depended on the affidavits or declarations filed in support of the application. During that telephone conversation, there was explained to me in some detail the mechanics of our client's preparation of a seed list. I was told that during the preparation of a given edition of the directory at issue, our client would prepare a set of seeded companies and a set of seeded names and addresses. The seeds would be inserted into the directory to be published. A separate list of the seeds would be

signed by those officers and employees of Business Guides, Inc., who had prepared the seed list. The signatures would be notarized and the signed, notarized seed list then put into the company safe. I was told by our client that this had been done in connection with the edition of the directory at issue, copyright 1984. I also was told that a copy of the seed list was in the file materials that were being sent to us in Beverly Hills. The signed, notarized seed list, which I had been told by our client had been prepared contemporaneously with preparation of the 1984 edition of the directory at issue, was sent to us and a copy of it is in our file in Beverly Hills.

14. During the October 27 telephone conversation with our client, our client emphasized to me the importance that the Lawsuit be filed immediately so that a temporary restraining order could be obtained before Comdex started on Sunday, November 9. During this telephone conversation I told our client that my experience in matters of this type is such that I did not believe that a hearing on the application for a temporary restraining order could be had on the same day that the Lawsuit was filed. During this telephone conversation I told the client that in my experience, the United States District Courts typically allow at least one day, and frequently several days, for defendants to respond to an application for a temporary restraining order or a preliminary injunction. I told our client that in view of Comdex being set on November 9, and in view of my expectation that the court would allow the defendants at least one day if not more in which to respond to the Lawsuit, I shared their belief that the Lawsuit must be filed as soon as possible.

15. Thereafter, on October 28, 29 and 30, 1986, I did further work reviewing and revising the draft papers, including preparing an application for an order sealing the affidavits or declarations to be submitted in support of the application for the temporary restraining order or preliminary injunction, speaking by telephone with counsel for Chromatic Communications and arranging for local counsel Richard W. Freeman, Jr., to file and serve the papers. Our agreement with Mr. Freeman was that our office would prepare all of the papers, including the affidavits, that his office would not be responsible for preparing any papers, and that to the extent possible, his office would arrange for filing and serving of the papers, make all court appearances, and attend all depositions. I have no information that Mr. Freeman or any other attorney in his office did anything in connection with the affidavits, except as set forth below.

16. On Tuesday, November 4 or Wednesday, November 5, I do not recall which, I received a telephone call from Mr. Freeman. He told me that he or someone in his office had just spoken by telephone with the law clerk to the Honorable Samuel Conti, Judge of the United States District Court for the Northern District of California, to whom this case had been assigned. Mr. Freeman told me that the law clerk told him that he, the law clerk, was uncertain as to what it was about the seeds in the plaintiff's directory that caused the plaintiff to believe that the defendants had copied the plaintiff's directory and thereby infringed the copyright. As I recall Mr. Freeman explaining it to me, the law clerk told him that he, the law clerk, had called some of the seeds and had been told by those seeds that they were operating under the

business names set forth in both the plaintiff's and the defendants' directories. Mr. Freeman and I believed that the law clerk had not called all of the seeds. Mr. Freeman and I also believed that because of the manner in which the first sealed affidavit was presented, the law clerk might not have appreciated the specific changes that had been made in particular entries in order to create the seeds in plaintiff's protected directory. Mr. Freeman and I agreed that our office should speak with the law clerk and make certain that he appreciated the changes.

17. I asked Ms. Margolis to speak with the law clerk and with our client to make certain that the law clerk had all of the details concerning the seeds that were necessary to establish that the defendants had infringed plaintiff's protected work. She said she would do so.

18. I am informed and believe that on Wednesday, November 5, Ms. Margolis had a lengthy telephone conversation with our client concerning the detailed changes in the entries that made up the seeds. I also am informed and believe that Ms. Margolis then had a telephone conversation with the law clerk during which she told the law clerk of the details concerning the seeds that she had just been given by the client. The clerk requested copies of the seeds as they appear in Business Guides' directories.

19. Ms. Margolis prepared, and I reviewed, a supplemental declaration to which was attached the copies of the seeds as they appeared in Business Guides' directories.

20. On Thursday, November 6, 1986 I told Ms. Margolis that it was my experience that orally advising the



court of details such as these might not support the entry of a temporary restraining or a preliminary injunction. I recommended to her that there be submitted another supplemental affidavit or declaration by the client, establishing on the record the details that Ms. Margolis had given to the law clerk by telephone.

21. On November 6, I reviewed the defendants' opposition to the plaintiff's application and prepared, filed and served a reply.

22. I am informed and believe that on Thursday, November 6, Ms. Margolis prepared a draft of a supplemental declaration and discussed it by telephone with our client. I also am informed and believe that Ms. Margolis sent that draft by telecopier to Mr. Bamberger in our New York office, and that Mr. Bamberger then took that draft to the client who reviewed it, edited it and signed it.

23. As set forth above, I know of, or am informed of, the following work in connection with the sealed declarations:

- (1) October 27 telephone conversation between Ms. Margolis, Mr. Bamberger, the client and me, during which the client explained how the seed list was prepared and preserved;
- (2) Draft of first declaration or affidavit prepared by Ms. Margolis, and submitted to client for checking, review, approval and execution;
- (3) Review of successful litigation based on this seed list filed by client against subsidiary of Xerox Corporation;
- (4) Review of signed, notarized seed list prepared contemporaneously with preparation of

1984 edition of plaintiff's work at issue in this litigation;

(5) November 5 telephone conversation between Ms. Margolis and the client concerning the details of the seeds, so that Ms. Margolis could convey this information to the court's law clerk;

(6) November 6 telephone conversation between Ms. Margolis and the client during which Ms. Margolis read to the client the supplemental declaration, and the client's indication that it was correct; and,

(7) November 7, delivery by Mr. Bamberger to the client of the proposed supplemental declaration referred to in subparagraph (6), which was reviewed, analyzed, changed and signed by the client.

24. I believed that it was reasonable for our law firm to rely on our client for the accuracy of the matters set forth in the sealed declarations. I am informed that our law firm and the lawyers in our law firm have represented this client for many, many years and have extensive experience with the client in all kinds of legal matters, including other infringement claims. Our client's predecessor company was the plaintiff in one of the seminal pieces of directory copyright infringement litigation, *Chain Store Business Guide, Inc. v. Wexler*, 79 F. Supp. 726 (S.D.N.Y. 1948). In the very recent past, our office represented our client in a lawsuit against a Xerox Corporation subsidiary on an almost identical claim, based on the same seed list at issue here, in which almost identical affidavits or declarations were submitted, in which the same seed list sustained the charge of infringement and in which our client was paid by Xerox a substantial



amount of damages, attorneys fees and costs. Finally, as indicated above, the declarations were checked and rechecked with our client, who corrected them.

25. From the beginning of our work on the Lawsuit, our firm spent approximately 99 hours of lawyer and paralegal time on the Lawsuit. Of this total, Ms. Margolis spent approximately 66 hours, Mr. Bamberger spend approximately 7 hours and I spent approximately 17 hours.

I declare under penalty of perjury that the foregoing is true and correct, except as to the matters set forth on information and belief, and I believe that they are correct.

Executed at Beverly Hills, California this 12th day of December, 1986.

/s/ Michael D. Dempsey  
MICHAEL D. DEMPSEY

(All Exhibits and Certificate of Service  
Omitted in Printing)

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	) Case No.
Plaintiff,	) C 86-6164 SC
vs.	) DECLARATION
CHROMATIC	) OF MICHAEL
COMMUNICATIONS	) A. BAMBERGER
ENTERPRISES, INC. and	)
MICHAEL SHIPP,	)
Defendants.	)

I, MICHAEL A. BAMBERGER, declare:

1. My name is Michael A. Bamberger. Except as to the matters set forth herein on information and belief, I make this declaration of my own personal knowledge. Except as to the matters set forth herein on information and belief, if I were called upon to testify in open court concerning the matters set forth herein, I could do so of my own personal knowledge. As to the matters set forth herein on information and belief, I am informed and believe that they are true.

2. I have practiced law for over twenty-five years. For sixteen years, I have been a partner in the law firm of

Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey (and its predecessors), attorneys for plaintiff Business Guides, Inc. My business address is 425 Park Avenue, New York, N.Y. 10022, telephone number (212) 371-5900.

3. I graduated from Harvard Law School, *magna cum laude*, in 1960. I am presently admitted to the Bars of the State of New York and the District of Columbia, and, in addition to the courts of those jurisdictions, I have practiced in the United States Supreme Court, United States Courts of Appeal for the 2nd, 3rd, 4th, 5th, 7th and 8th circuits, as well as the U.S. District Courts for the Southern and Eastern Districts of New York, to each of which I am admitted.

#### The Plaintiff:

4. Lebhar-Friedman, Inc., of which plaintiff is a subsidiary, has been represented by my law firm since 1982. I personally have represented them in a variety of matters including a copyright infringement action, a number of libel actions, and a series of contract suits. I have further represented them in a number of corporate matters. At all times I have found them reliable and cautious.

5. Lebhar-Friedman, Inc. has for over sixty (60) years been a leading publisher of periodicals and directories dealing with retail and related businesses. Attached hereto as Exhibit "A" is a 1985 brochure describing the major periodicals it publishes and as Exhibit "B" is a brochure describing its 1987 Directories.

#### Plaintiff's Prior Litigations

6. Our client has long been committed to the protection of its copyrighted work product from infringing copiers. As early as 1948, plaintiff was successful in enjoining an infringement of its directory, in part by pointing to errors common to both the copyrighted work and the infringing copy. *Chain Store Business Guide vs. Wexler*, 79 F. Supp. 726 (S.D.N.Y. 1948). As the Court observed there:

"[V]arious errors contained in plaintiff's Exhibit A [plaintiff's book] are listed in Exhibit A-1 [the copy]. . . .

That this is no mere coincidence can hardly be questioned." (p. 728)

Thus, when we began to represent this client, we became aware of its history as a practiced protector of its copyrights.

7. More recently, late in 1984 we prepared a copyright infringement action and a motion for injunctive relief in the United States District Court in the Southern District of New York on behalf of plaintiff herein against R. R. Bowker, then a division of Xerox Corporation. The evidence of infringement upon which we based the case was "seeds" prepared by our client. "Seeds" are a common way to protect such directories or other works from copyright infringements. A "seed" is created when the publisher takes an accurate listing and makes one or more alteration in that listing. It can also consist of a wholly "false" listing.



If those "seeded" listings appear in competitive publications, their presence provides the strongest evidence of the copying of plaintiff's work.

8. After review of the complaint, and related motion papers, Xerox/Bowker was convinced of the validity of the claim and settled the case on a very favorable basis for Business Guides, Inc. The settlement included payment of plaintiff's attorneys' fees, an agreement to destroy all copies of the offending material and an agreement not to publish a competing directory prior to 1986. It is particularly interesting to note that one of the copyrighted works in this action is the same book as that in the Xerox/Bowker case. Most importantly, we believe that the seeds for the 1984 book in the Bowker case were the same as those here.

9. The reason I state this history to the Court is that, when our client came to us with a request that we deal with an infringement by defendants, we, as lawyers, had a strong belief in the client's integrity, the soundness of its seeding process and its reliability in making claims of copyright infringement.

#### The Origin of this Case

10. In the fall of this year, I had a number of meetings with Victoria White, Associate Director, Mail Marketing Resources, of plaintiff. She advised me that plaintiff was experiencing problems of infringement of various of its directories by persons selling competing mailing lists. With an associate in our New York office, we prepared a form cease and desist letter and sent it to a number of companies in the field.

11. Early in October, 1986, Ms. White, called me and stated that a company on the West Coast had copied from their Directory of Computer + Software Dealers, and was selling a diskette which contained the retail outlet information of its directory. Ms. White told me that the competing list was plainly copied from hers. The basis of her belief that infringement had occurred was the existence of a number of Business Guides "seeds" appearing on a printout of the diskette.

12. Ms. White said that it was important to get an injunction prior to the commencement of a computer industry trade fair known as the Comdex trade fair, scheduled for Las Vegas early in November. The advent of such a trade fair creates a significant sales opportunity for lists such as plaintiff's to be sold. Ms. White further said that the competing infringing list on the diskette was being sold for substantially less than plaintiff was able to sell its diskette. She attributed the lower competitive price to the fact that Chromatics did not have the initial cost of procuring and building up the list which plaintiff had to bear.

13. I then contacted Jeffrey Charlston, the partner in our Beverly Hills Office responsible for administering the litigation department and assigning attorneys. I informed him of the nature of the matter, to which he assigned Lisa Margolis, a seasoned litigation associate in our Beverly Hills office. I told Ms. Margolis the history of the matter, mentioned to her the similar case we had handled against Xerox for this client here in New York, suggested that she be directly in contact with Ms. White to get a firsthand understanding of the facts. In a series of subsequent calls



I was kept up to date on the progress of the matter and contributed to discussions of strategy and mechanics.

14. On the evening of November 6, 1986, Lisa Margolis called me to say that we would be shortly receiving on our computer in New York a supplemental declaration to be executed by Michael Lambe, one of the plaintiff's executives, and that the declaration was to be submitted to the Court to support our motion for injunctive relief. She asked that I have it reviewed and signed by Mr. Lambe, and that I have it transmitted by telecopier to a receiving location in San Francisco so that she could pick it up and take it to court.

15. On the morning of November 7, 1986, I received the draft declaration from our word processing department and, first thing in the morning (to the best of my recollection at about 9 o'clock A.M.), met with Michael Lambe in the reception area of his office (which is on the 5th floor of the same building in which my office is located). We sat in his reception room where he started to read it after I requested that he review it for accuracy. I told him I would return in about two hours to give him time to complete his examination of its contents.

16. Approximately two hours later I returned to the office of Business Guides, Inc. Mr. Lambe told me that he had not only gone over the declaration carefully, but had received the back-up material as well, and that there was a single paragraph with whose content he was not sufficiently comfortable to include in verified court papers. Due to the time constraint, at my suggestions we simply crossed out that paragraph. He then gave me several other documents which he wanted me to send to Lisa

Margolis which he believed supported our position. I then transmitted both the declaration and the additional materials to San Francisco.

17. On another occasion I was on a telephone conference call with Michael Lambe, Victoria White, Lisa Margolis, and Michael Dempsey. During that conference call, we questioned Mr. Lambe and Ms. White about the accuracy and reliability of the "seeds." We were advised that in infringing our clients lists, the defendants eliminated or did not utilize some of the more obvious "seeds." However, they still utilized several "seeds" as will be more fully discussed below. This discussion occurred before the petition was filed.

18. The following seeds from plaintiff's Directory were incorporated into the defendant's Directory:

(a) A nonexistent corporation named "NFR Computer Room," a name invented by the plaintiff with an address which is the address of an employee of the plaintiff.

(b) An entity named "Computers & Applications, Telephone (206) 451-8077, 10623 N.E. 8th Street, Bellevue, Washington, 98004, store manager David "Choi." The store manager's name is actually spelled "Choy" and was changed to "Choi" to create a "seed."

(c) An entity named "Computer Discount of America." This is a name which the plaintiff invented. The correct name of the firm in 1984 and 1985 was "Computer Discount of New Jersey." (Although not relevant to the issue, this company recently changed its name and is now called, "World of Computers."

I believe that on the basis of the first "seed" alone, both an application and a temporary restraining order should have been justified. When the three above-named "seeds" are taken together, it is clear to me that the plaintiff is correct in his allegations and the temporary restraining order could well have issued in the absence of the remaining "seeds."

Concerning the three remaining "seeds," plaintiff explained to us in a plausible manner subsequent to the hearing before Judge Conti the reasons for his representations. If required to do so, I am prepared to tender the explanations during this hearing.

19. Since my October 1986 conversation with Victoria White, I have believed, and continue to believe, that plaintiff has meritorious cause of action in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Francisco, California, on December 15, 1986.

/s/ Michael A. Bamberger  
MICHAEL A. BAMBERGER

(Certificate of Service  
Omitted in Printing)

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.	)	No. C 86 6164 SC
Plaintiff,	)	
vs.	)	DECLARATION
	)	OF LISA B.
CHROMATIC	)	MARGOLIS
COMMUNICATIONS	)	
ENTERPRISES, INC., and	)	
MICHAEL SHIPP,	)	
Defendants.	)	

I, LISA B. MARGOLIS, do hereby declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the States of California and New York and the United States Courts of Appeal for the District of Columbia, Second, Ninth, and Tenth Circuits. I am an associate with the law firm of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey (the "Firm"), counsel for plaintiff, BUSINESS GUIDES, INC. Except as to those matters set forth herein on information and belief, if I were called upon as a witness to testify, I could do so of my own personal knowledge. As to the matters set forth herein on information and belief, I am informed and believe that they are true. I make this



declaration in connection with the Order of the United States District Court that the Magistrate conduct an inquiry into the preparation of sealed affidavits filed in the litigation known as *Business Guides, Inc. v. Chromatic Communications, Inc., et al*, C-86-6164 SC (the "lawsuit").

2. I believe that the lawsuit was based on reasonable inquiry and is well grounded in fact. I am informed and believe that our client has had experience in copyright infringement cases in the past. Specifically, I am informed and believe that our client brought a case involving the directory at issue here against a subsidiary of the Xerox Corporation, in which it alleged that that Xerox subsidiary had copied its directory, including its "seeds" - i.e., false entries and entries with noticeable spelling errors planted in plaintiff's directory for the purpose of identifying copyright infringers. I am further informed and believe that Xerox settled the case and paid our client a substantial sum of money in damages, attorney fees, and costs. As set forth in more detail in this declaration, I believe that the inquiry concerning our client's "seed" list was reasonable, that the prior successful use of the client's same "seed" list in other litigation is an indication that the lawsuit is well grounded in fact, and that what I understand to be the Court's finding that at least two of the six seeds at issue were copied by the defendants from the plaintiff's directory also indicates that the initial lawsuit is well grounded in fact.

3. As set forth in more detail below, the information that was presented to the Court concerning what had been altered in each "seed" was obtained from Michael Lambe, the Director of Research at BUSINESS GUIDES, INC., which I am informed and believe is a division of

Lebhar-Friedman, Inc. Mr. Lambe communicated that information to me over the telephone. Subsequently, I prepared a declaration for Mr. Lambe's signature setting forth that information. I read the declaration to Mr. Lambe over the telephone, and he requested revisions which I incorporated. I sent the revised declaration via fax to Michael Bamberger, a partner in the Firm's New York office. I am informed and believe that Mr. Bamberger asked Mr. Lambe to review the declaration and that Mr. Lambe reviewed and edited the declaration before signing it. The information contained in Mr. Lambe's declaration is supported by notarized statements in the Firm's file from a prior case and notarized statements that Lebhar sent to the Firm in connection with the lawsuit.

4. On October 8, 1986, Jeff Charlston, the partner in charge of the assignment of litigation cases in the Firm's Beverly Hills office, asked me to call Michael Bamberger, a partner in the New York office, regarding a copyright infringement case. When I called Mr. Bamberger, he advised me that one of his clients, Lebhar-Friedman, Inc., publishes trade periodicals and business directories and that someone in Silicon Valley had copied its directory of computer stores and retailers. He explained that the client knew that its list had been copied because it had planted "seeds" in the list and because the infringer had copied those entries. He stressed that it was necessary to act as quickly as possible because an important convention was scheduled in November. He asked me to prepare and send a quick cease-and-desist letter and to call Victoria White, who is

an Associate Director at Lebhar-Friedman, to collect all the information.

5. When I called Ms. White, she advised me that the infringer was CHROMATIC COMMUNICATIONS ENTERPRISES, INC. ("Chromatic"), P. O. Box 3249, Walnut Creek, California 94598. Ms. White also stated that although Lebhar believed that Chromatic had started infringing its directory in 1983 or 1984, it had only recently discovered the infringement. She also advised me that Lebhar had purchased the infringer's list approximately three weeks prior to our conversation and that Lebhar knew that Chromatic had infringed its directory because Chromatic had copied the "seeds." She mentioned that Lebhar had been involved in and was successful in a similar case involving R. R. Bowker, a division of Xerox.

6. Ms. White further advised me that Chromatic's product is entitled "MicroLeads" and that Lebhar-Friedman's written directory is entitled the "Directory of Computer & Software Retailers." She added that Lebhar also sells the directory in the form of a diskette. She said that Chromatic had bought Lebhar's printed directory, reformatted it, and was selling it on a diskette. She said that she knew people that had purchased Chromatic's product and stressed that it was necessary to act as quickly as possible because a trade show was scheduled for November 9, 1986.

7. Because Ms. White had suggested that I obtain some of the materials from the Bowker case, I again called Mr. Bamberger, and he arranged for those materials to be sent. The documents received included a cease-

and-desist letter. Based on that letter, as well as on the facts, as explained to me by Ms. White and Mr. Bamberger, I drafted a cease-and-desist letter to Michael Shipp, Chromatic's President. I faxed a draft to Mr. Bamberger on October 14, 1986, for his review. We discussed the draft over the phone, and Mr. Bamberger's only suggestion was that I shorten the time period that I had given Mr. Shipp to respond to our letter from ten to five days. I made that change and sent the letter to Mr. Shipp via Federal Express on October 14, 1986. A copy of that letter is attached hereto as Exhibit "A." Because Ms. White had given me a post office box number, I instructed my secretary to obtain Chromatic's telephone number from information and to call Chromatic to obtain a street address so that the letter could be delivered by Federal Express. My secretary made the phone call and then sent the letter by Federal Express.

8. On the morning of October 16, I received a telephone call from Federal Express advising me that the letter could not be delivered to the address that Chromatic had given my secretary. I called Chromatic myself to try to obtain a correct street address, but the woman that answered the phone refused to give it to me. In order to insure that the letter was delivered as quickly as possible, I arranged for an air courier to deliver the letter to the Post Office at which Chromatic's post office box is located in Walnut Creek, California. I changed the date on the letter that I had previously sent and requested that Chromatic respond to our demand by October 22, 1986. A copy of that letter is attached hereto as Exhibit "B."

9. On October 20, 1986, I received a telephone message from John Cornelius, attorney for Chromatic and Mr.



Shipp. Although I immediately attempted to return the call, I was unable to reach Mr. Cornelius until October 22, 1986. When I spoke with Mr. Cornelius, he advised me that Mr. Shipp used independent resources to compile his product; that Mr. Shipp had not seen or heard of Lebhar-Friedman's directory; and that Mr. Shipp had telephone bills to show that he had talked to each of the entries in his directory. Mr. Cornelius also said that he was very busy and that he would not be able to prepare a letter until after he met with Mr. Shipp on October 24, 1986.

10. I called Ms. White to advise her of my telephone conversation with Mr. Cornelius and to ask her how she wanted me to proceed. She advised that she wanted to consult with her people and get back to me.

11. On October 23, 1986, I spoke with Ms. White and she advised me that she wanted me to obtain a temporary restraining order. I then spoke with Mr. Bamberger, who instructed me to put a complaint together and to call Mr. Cornelius to see if he would accept service of process. As I recall, Mr. Bamberger added that he would send me the entire Bowker file in the pouch. He also said that he wanted Michael Dempsey of the Beverly Hills office to work on the case with me. He asked me to speak with Mr. Dempsey to see if he had the time to devote to the matter. I spoke with Mr. Dempsey and he said he would be happy to work on the case with me. I began researching and preparing the necessary papers.

12. On October 24, 1986, I called Mr. Cornelius and asked him if he would accept service of process on behalf of his client. He advised me that he would have to check

and get back to me. I also called Yvonne LaRose, a paralegal, in the Firm's Los Angeles office, and asked her to ascertain the name and address of the agent for service of process for Chromatic. When she called me back with the information, she advised me that Chromatic had failed to pay its corporate franchise taxes.

13. On October 24, 1986, I also spoke with Mr. Dempsey, who advised me that it was important to start preparing the affidavits as soon as possible because they would have to be signed by the client. Accordingly, I began to prepare the affidavits, using material available to me, including affidavits that had been prepared in the Bowker case, which were in the file that Mr. Bamberger had sent me. Also included in the file was a list of "seeds" from the 1984 edition of Lebhar's directory. A copy of that list is attached hereto as Exhibit "C." That list includes some of the "seeds" that also appear in Chromatic's directories. In preparing the affidavits I realized that I needed further factual information from the client.

14. I spent Saturday afternoon and all day Sunday completing the affidavits as best I could and researching and preparing the memorandum of law, the complaint, the first set of interrogatories, and the first set of requests for admissions. In preparing those papers, I used the documents from the Bowker file as a guide.

15. On Monday morning, October 27, 1986, at 8:00 a.m., California time, I called Ms. White and advised her of the information that I needed to complete the affidavits. I told her that, among other things, I needed copies of the "seeds" as they appeared on Chromatic's

diskette and information as to the costs of preparing the recent editions of Lebhar's directory and its diskette product. Although Ms. White provided me with some of the information that I needed, she said that she would have to get back to me with the rest of it. In providing me with the details regarding Lebhar's discovery of the infringement, Ms. White pointed out that Lebhar had been publishing directories for fifty-five years.

16. On that same day, October 27, 1986, I received a letter from Mr. Cornelius, a copy of which is attached hereto as Exhibit "D." I called Mr. Bamberger to advise him that I had received the letter and he arranged a conference call with me, Ms. White, Mr. Lambe, and himself. After the four of us had discussed the letter for a few minutes, Mr. Bamberger suggested that we include Mr. Dempsey in the conference. Accordingly, I went to Mr. Dempsey's office and we resumed the telephone conference from there. During that conversation, Ms. White and Mr. Lambe reiterated that Mr. Shipp had copied the "seeds" from Lebhar-Friedman's directory. They stated that although Mr. Shipp had not copied all of the false entries, at the very least he had copied more subtle "seeds" which contained intentional spelling and other errors. Mr. Bamberger pointed out that the odds of these same typographical and spelling errors occurring by chance in both directories were very small. We agreed that we would send a letter to Mr. Cornelius simultaneously with the lawsuit stating out basic position and that although we wanted to avoid litigation we had no choice but to go ahead with the lawsuit, given the short time before the Comdex Trade Show scheduled for November 9, 1986. I asked Ms. White and Mr. Lambe to

explain the significance of the Comdex Trade Show. They explained that the Comdex Show was held semi-annually, that it was the largest trade show for the microcomputer market place, and that it allowed them to market their product to a captive audience.

17. As I recall, on October 27, 1986, I received a letter from Ms. White dated October 24, 1986. Attached to the letter was a list of "seeds" that Chromatic had copied in its diskette and an explanation of how each "seed" had been altered. A copy of that letter is attached hereto as Exhibit "E."

18. On October 27, 1986, I gave Mr. Dempsey my proposed draft of the papers to be filed, including a complaint, an application for a temporary restraining order, a memorandum of law, and an order to show cause. He suggested some revisions which I incorporated. He also suggested that I prepare separate applications for the submission of affidavit *in camera* and the request for expedited discovery, which I had included in the memorandum of law. Accordingly, I revised my papers and prepared new applications for the submission of affidavit *in camera* and for expedited discovery and supporting memoranda of points and authorities, affidavits, and proposed orders.

19. On October 28, 1986, to the best of my recollection, although Ms. White gave me part of the information that I needed to complete the affidavits, she still did not have all of the financial information that I had requested regarding the costs of preparing Lebhar's directory. To expedite the process, I faxed copies of the affidavits that I



had prepared for Andrew DeSarle, Mr. Lambe, and Victoria Burdick, a sales representative at Mail Marketing Resources, which is a division of BUSINESS GUIDES, INC., to Ms. White for her and their review. Ms. Burdick's affidavit stated, among other things, that Chromatic's directory included the "seeds" from Lebhar's directory, and copies of the "seeds" as they appeared in Chromatic's directory were attached as an exhibit.

20. On October 27 or 28, 1986, I do not recall which, Ms. White also advised me that it was necessary to change the papers that I had prepared because she had discovered that Mr. Shipp had used Lebhar-Friedman's product in preparing not only his diskette but his printed directories as well. Accordingly, further changes had to be made. Ms. White also wanted changes made in each of the affidavits. I made those changes and faxed them back to her on October 29.

21. On October 29, 1986, I received materials that Ms. White had send me via our Firm's pouch, including copies of the "seeds" as they appeared in each of Chromatic's directories. A copy of those documents is attached hereto as Exhibit "F". I had told Ms. White that I needed those copies so that they could be attached to Ms. Burdick's affidavit. Also enclosed in the materials that I received from Ms. White were notarized statements specifying how each of the "seeds" had been altered and which of the seeds were totally false. A copy of those statements is attached hereto as Exhibit "G".

22. On October 29, 1986, I sent the complaint, the application for temporary restraining order, the affidavits, and the related papers to Richard Freeman, our

local counsel. Those papers included Ms. Burdick's affidavit, as revised pursuant to Ms. Burdick's instructions, with copies of the "Seeds" as they appeared in Chromatic's directories attached to it. A copy of that affidavit is attached hereto as Exhibit "H."

23. On October 30, 1986, Mr. Freeman advised me that he had presented the papers to the court and that Mr. Cornelius had to be served as quickly as possible. Prior to that date, Mr. Cornelius had advised me that he was authorized to accept service of process. Mr. Freeman asked that I make arrangements for a process server in San Francisco to serve the papers, and I contacted a process server in San Francisco who said that he would attempt to effect service of process that evening.

24. On November 4, 1986, Mr. Freeman called to advise me that the hearing was scheduled for November 7, 1986. Later that same day, Mr. Dempsey called me to advise me that Mr. Freeman had told him that Judge Conti's clerk, Robert Funston, had requested further information regarding the "seeds." Mr. Dempsey asked that I call Mr. Funston directly. I called Mr. Funston, and he told me that he wanted to know specifically what had been altered in each "seed." I told him that I would call the client and obtain the information. Accordingly, I called Mr. Lambe. He went through the "seeds" with me and told me what had been altered in each one. He told me that one of the "seeded" addresses was the home address of a Lebhar employee.

25. I then called Mr. Funston and relayed to him the information that Mr. Lambe had communicated to me. Mr. Funston also requested copies of the "seeds" as they

appeared in Lebhar Friedman's directories. Accordingly, I called Ms. White and asked her to send me copies of the "seeds" as they appeared in the 1984 and 1985 directories and prepared an accompanying supplemental affidavit for Ms. Burdick's signature. I did not need copies of the seeds from the 1986 directory because Ms. White had previously sent me a copy of that directory. I faxed the affidavit that I had prepared to Ms. Burdick, and she signed it and faxed the signature page back to me the next day. I sent the supplement to her affidavit to Mr. Funston by air courier on November 5, 1986. A copy of that supplement to the affidavit is attached hereto as Exhibit "I."

26. On November 5, 1986, Mr. Freeman advised me that he had received an opposition from Chromatic and a declaration of Mr. Shipp. I asked him to have those papers delivered to me by air courier, and I received those papers at my home at approximately 10:00 p.m. that night.

27. Because I had a deposition scheduled on November 6, 1986, Mr. Dempsey prepared the reply to Chromatic's papers. We faxed our reply to a law firm in San Francisco which then delivered it by messenger to the court. After the deposition, I had a conference with Mr. Dempsey regarding my preparation for the argument which was scheduled for the next day. He said that he felt we could clarify and strengthen our papers by stating what had been altered in each of the "seeds." I further consulted with Mr. Freeman on this matter. He suggested that I prepare a new affidavit specifying what had been altered in each "seed" and file it the next day prior to the argument. Accordingly, I prepared the affidavit as

quickly as possible and called Mr. Lambe at home. I read him the affidavit over the phone and he asked that I make some revisions which I incorporated into the affidavit. I then called Mr. Bamberger at his home and advised him that I would have the affidavit transmitted by Wang to New York and gave him a fax number so that he could fax the signed affidavit to San Francisco the next morning. Mr. Freeman's associate, Peter Ottenweller, agreed to pick up the faxed affidavit and deliver it to the courthouse.

28. The next morning I flew to San Francisco for the hearing. Mr. Ottenweller met me at the courthouse, and we gave the faxed signed copy of Mr. Lambe's affidavit to Mr. Funston for filing. A copy of that affidavit is attached hereto as Exhibit "J."

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on this 15th day of December 1986, at Beverly Hills, California.

/s/ Lisa B. Margolis  
LISA B. MARGOLIS



## EXHIBIT "A"

FINLEY, KUMBLE, WAGNER, HEINE,  
 UNDERBERG, MANLEY, MYERSON & CASEY  
 A Partnership Including Professional Corporations  
 9100 WILSHIRE BOULEVARD  
 BEVERLY HILLS, CALIFORNIA 90212

[Letterhead Omitted In Printing]

October 14, 1986

VIA FEDERAL EXPRESS

Michael Shipp, President  
 Chromatic Communications, Inc.  
 P.O. Box 3249  
 Walnut Creek, California 94598  
 Re: *MicroLeads*

Dear Mr. Shipp:

We represent Business Guides, Inc., which is the publisher of the 1984 through 1986 volumes of the "Directory of Computer & Software Retailers." It has come to their attention that you have published and are promoting and selling the above-referenced directory on diskettes listing the various retail outlets and distributors involved in the sale of computers, software and related products, and that you used our client's directory and the data contained there in preparing your directory in a manner that violates the copyright laws and constitutes unfair competition. It has also come to their attention that you are mispresenting the source of your directory information in your promotional materials.

We demand that you acknowledge to us that you will immediately cease and desist marketing the above-referenced directory and destroy all existing diskettes of the

directory; that you will immediately cease and desist promoting the above-referenced directory and destroy all existing promotional materials; that all information received by you as a result of the unlawful use of our client's directory will be destroyed, whether in the form of notes, or otherwise; and that all other papers prepared using information contained in or obtained as a result of our client's directory will be destroyed. We doubt whether, in light of the unlawful use of our client's directory, you can publish any similar directory which is not tainted by these unlawful acts.

We request a satisfactory answer from you within five days, failing which, we have been instructed to taken such action as may be required to protect out client's rights.

Very truly yours,

/s/ Lisa B. Margolis  
 Lisa B. Margolis for  
 Finley, Kumble, Wagner, Heine,  
 Underberg, Manley, Myerson &  
 Casey

LBM:ts

cc: Michael A. Bamberger  
 Victoria White

**EXHIBIT "B"**

FINLEY, KUMBLE, WAGNER, HEINE,  
 UNDERBERG, MANLEY, MYERSON & CASEY  
 A Partnership Include Professional Corporations  
 9100 WILSHIRE BOULEVARD  
 BEVERLY HILLS, CALIFORNIA 90212

[Letterhead Omitted In Printing]

October 16, 1986

Michael Shipp, President  
 Chromatic Communications, Inc.  
 P. O. Box 3249  
 Walnut Creek, California 94598

Re: *Microleads*

Dear Mr. Shipp:

We represent Business Guides, Inc., which is the publisher of the 1984 through 1986 volumes of the "Directory of Computer & Software Retailers." It has come to their attention that you have published and are promoting and selling the above-referenced directory on diskettes listing the various retail outlets and distributors involved in the sale of computers, software and related products, and that you used our client's directory and the data contained therein in preparing your directory in any manner that violates the copyright laws and constitutes unfair competition. It has also come to their attention that you are misrepresenting the source of your directory information in your promotional materials.

We demand that you acknowledge to us that you will immediately cease and desist marketing the above-referenced directory and destroy all existing diskettes of the

directory; that you will immediately cease and desist promoting the above-referenced directory and destroy all existing promotional materials; that all information received by you as a result of the unlawful use of our client's directory will be destroyed, whether in the form of notes, or otherwise; and that all other papers prepared using information contained in or obtained as a result of our client's directory will be destroyed. We doubt whether, in light of the unlawful use of our client's directory, you can publish any similar directory which is not tainted by these unlawful acts.

We request a satisfactory answer from you by October 22, 1986, failing which, we have been instructed to take such action as may be required to protect our client's rights.

Very truly yours,

/s/ Lisa B. Margolis  
 Lisa B. Margolis for  
 Finley, Kumble, Wagner,  
 Heine, Underberg, Manley,  
 Myerson & Casey

LBM:jmr

cc: Michael A. Bamberger  
 Victoria White



## EXHIBIT "D"

JOHN M. CORNELIUS  
ATTORNEY AT LAW  
P O BOX 271922  
CONCORD, CALIFORNIA 94520

TEL (415) 927-1996

October 24, 1986

Lisa B. Margolis, Esq.  
Finley, Kumble, Wagner, Heine,  
Underberg, Manley, Myerson & Casey  
9100 Wilshire Boulevard  
Beverly Hills, California 90212

Re: Your letter of Oct. 16, 1986 to Chromatic Communi-  
cations, Inc.

Dear Lisa,

This letter is being sent in response to your October 16, 1986 letter to Michael Shipp, President of Chromatic Communications, Inc. Mr. Shipp has retained this office and all future communications on this subject should be directed to me, per our telephone conversation of October 24th.

Enclosed is a copy of a letter addressed to me from Michael, responding to the various accusations contained in your letter of October 16th. I suggest you convey this letter to your principals. The final paragraph of the letter conveys the bottom line; please consider this before attempting any further actions against Chromatic Communications.

Sincerely,

/s/ John M. Cornelius  
John M. Cornelius

cc: Michael Shipp

CHROMATIC  
COMMUNICATIONS

John Cornelius  
1416 Sunshine Drive  
Concord, CA 94520

Mr. Cornelius:

1. No one at Chromatic Communications Enterprises, Inc. has ever bought, borrowed or seen any publication known as "The Directory of Computer and Software Retailers" published by Business Guides, Inc.
2. All data included in MicroLeads™ was collected via (1) lists supplied to us by manufacturers and franchisors, (2) lists developed from telephone directories, (3) buyers of our other publications, (4) leads collected through our appearances at Comdex since 1983 and (5) newspaper advertisements from around the country.
3. All data included in MicroLeads™ has been verified via telephone interviews with the owners/store managers of each and every entry in MicroLeads™ prior to each publication of the directory.
4. All data included in MicroLeads has been marketed in various forms since early 1984.
5. Lebhar-Friedman (in New York) is the parent company of Business Guides, Inc. Since early 1984 they have been receiving at their various publishing offices a variety of direct mail pieces promoting our "Directory of Microcomputer Retailers" and MicroLeads™. Why have they waited almost three years to get in touch with us over this matter? I believe this is a typical case of a large

company (Lebhar-Friedman sales are in excess of 50 million annually) attempting to put their competition out of business.

6. According to the attached promotional piece their guide lists 12,750 stores. If we did in fact copy their publication why would we not duplicate the entire directory? Our directory currently includes, 4,954 store locations.

We would be willing to do the following:

1. Show to you or your agent all documents including but not limited to telephone bills, manufacturer supplied lists, newspaper clippings, etc. that were used to compile MicroLeads™ at your convenience in our lawyers offices.
2. Perform a line by line comparison of both present and past Chromatic Communications Enterprise, Inc. directories with your directories at our lawyers offices.

We will continue to publish and market MicroLeads™ as all information contained therein was and currently is developed independent of any other directory within this industry. Furthermore, any continued obstruction of out business by you or your agents will result in a law suit being filed to prevent such interference.

Sincerely,

/s/ Michael Shipp  
Michael Shipp  
President

# EXHIBIT "G"

## COMPUTER + SOFTWARE RETAILERS

Company Name City, State	As Appears In 1984 Edition	Correct Information
Eagle Micro Systems, Inc., Auburn, AL	Auburn 63830	Auburn 36850
Computerland Dothan, AL	Robert C. Gilpin - President, Buyer.	Leonard Layne - President, Buyer.
Warehouse Software Glendale, AZ	Susan Jones - Shipping Mgr.	Susan Kaiser - Shipping Mgr.
Data IV Computer Store Yuma, AZ	602 344-4400	602 344-4440
Concord Computer Products Anaheim, CA	John Foeldi - VP.	John Foeldi - VP.
Triangle Computer Systems Campbell, CA	Campbell 95588	Campbell 95008



<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
Computerland Citrus Heights, CA	Gil Satrom - Partner.	Gar Satrom - Partner.
Dan Dee Computers Citrus Heights, CA	6103 Sunrise Mall	6013 Sunrise Mall
Coast Computer Center Costa Mesa, CA	Mike Seigrist, Jr. - GM, Marketing Mgr, Sales Mgr, Buyer.	Steve Purres - GM, Marketing Mgr. Sales Mgr, Buyer.
Computer Business Store Costa Mesa, CA	Costa Mesa 12626	Costa Mesa 92626
Coolsol, Inc., Costa Mesa, CA	Costa Mesta	Costa Mesa
Computers Unlimited Dana Point, CA	714 661-9793 Robert Wieland - President, Buyer.	714 661-8062 Robert Willard - President, Buyer.
The Floppi Disk, Inc., Downey, CA	Cory E. Larson - GM.	Cory E. Larsen - GM.

<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
Computerland Fairfield, CA	Dale Colman - GM.	should not have appeared
Micro Pacific Computer Center Fresno, CA	Diana Madsano - Buyer.	Diana Medrano - Buyer.
Patio Computer Sales Company North Hollywood, CA	213 762-0020	818 762-0020
Dow Radio, Inc., Pasadena, CA	Pasadena 91107	Pasadena 91106
DuWayne Industries, Inc., Pleasant Hill, CA	415 432-4373	415 932-4373
Information Please San Francisco, CA	415 788-4636	415 788-3971
Almanac Computer Supply, Co., Santa Cruz, CA	408 525-1980	408 425-1980

<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
Data Systems West Sherman Oaks, CA	213 872-3479	818 907-9110
Unicomm, Inc., Tarzana, CA	213 996-5722	818 996-5722
McCormick Computer Systems Torrance, CA	2942 Rolling Hills Road	2943 Rolling Hills Road
Logic Tree Computer Whittier, CA	10053 Whitwood Dr.	10053 Whittwood Dr.
Ram Computer Center Acton, MA	Mat Leona - Educational Specialist	Matt Leona - Educational Specialist.
The Computer Store, Inc., Sudbury, MA	Howard Levingston, Sr. - VP, Adv.	Howard Levingston, Sr. - VP, Adv.
Computerland Wellesley, MA	Robert Robichaux - ExVP, GM, Buyer.	Robert Robischaud - ExVP, GM, Buyer.
The Software Store Marquette, MI	706 Ippewa Square	706 Chippewa Square

134

<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
Computerland Saginaw, MI	3545 Bay Rd.	3845 Bay Rd.
The Listening Post And Book Company Saginaw, MI	The Listening Post And Book Store	The Listening Post and Book Company
Rite Way Enterprises, Inc., Warren, MI	Ronald Keiler - Adv Mgr, Sales Mgr.	Ronald Kieler - Adv Mgr, Sales Mgr.
Computer Professionals, Burnsville, MN	Glenn V. Cronquist - President, Buyer.	Glenn V. Gronquist - President, Buyer.
Computer King Minneapolis, MN	710 S. France Ave.	7101 S. France Ave.
Computer Hdwe, Kearney, NE	Tom Meyers - Sales Mgr.	Tom Meyers - Sales Mgr.
Computersmart Omaha, NE	402 291-3105	402 291-3050

135



<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
The Bottom Line Milford, NH	P. O. Box 432	P. O. Box 423
Computech Business Systems, Inc., Plaistow, NH	Harry Sider - Service Mgr. Annie Ardo - Office Mgr.	Hugh Sider - Service Mgr. Annie Arbo - Office Mgr.
A Computer Solution Basking Ridge, NJ	201 766-3977	201 766-2634
Computer Encounter Lawrenceville, NJ	2936 Brunswick Rd. 06848	2936 Brunswick Pike 08648
Micro Business Systems Parsippany, NJ	07058	07054
Entre Computer Center Princeton, NJ	47 State Rd. Rte. 306	47 State Rd. Rte 206
Felice's Follies Red Bank, NJ	47 Brood St.	47 Broad St.

136

<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
Computer Discount of New Jersey West Milford, NJ	Computer Discount of America	Computer Discount of New Jersey
Computerland Albuquerque, NM	78112	87112
KSA Corporation Albuquerque, NM	Albuquerque	Albuquerque
Software City Great Neck, NY	11012	11023
Computer Systems & Technology, Inc., Long Island City, NY	Computer Channel	Computer Systems & Technology, Inc.,
Creative Systems Electronics, Inc., Niagra Falls, NY	John Muebschmann - VP, Buyer	John Huebschmann - VP, Buyer
Software City Syracuse, NY	Jeff Nobensky - Partner, Buyer.	Jeff Norensky - Partner, Buyer.
Computerland Columbus, OH	Dayton	Columbus

137

<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
Programs Unlimited Columbus, OH	Worthington	Columbus
Austin Business Computers Austin, TX	Barbara Borttorff - VP, Store Operations, Adv Mgr., Buyer.	Barbara Borttorff - VP, Store Operations, Adv Mgr., Buyer.
Yes Computer Bryan, TX	77840	77802
Software Center Dallas, TX	Jose Deiasia - Owner, GM, Buyer.	Jose Delaisia - Owner, GM, Buyer.
Micro Logic Computer Store El Paso, TX	9520 Viscount Suite, 2F	9530 Viscount, Suite 2F
Irving Computers Irving, TX	214 254-6850	214 790-0908
CSI Plano, TX	214 423-3362	214 423-3262

138

<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
Shepard & Vick Computer Professionals, Inc., Richardson, TX	75231	75080
Computer Electronics, Inc., Tyler, TX	Linda Richard Volerez - VP.	Linda Richard - VP.
Computerland Victoria, TX	3112 F. North Nauarro	3112 F. North Navarro
Computer Concepts Richmond, VA	804 260-1122	804 266-1122
Computerland Woodbridge, VA	703 690-6213	703 491-4151
Entre Computer Center Bellevue, WA	89004	98004
Computer Access Learning Center, Inc., Federal Way, WA	206 874-3540	206 874-2540

139



Davidson's Computer Center, 1275 15th St.  
Telephone Unpublished

Fort Lee 1  
07024

Product Lines: Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices; Supl. System Units

Computer Models: Columbia Data Products MPC; Commodore VIC-20

Sales: \$1,750,000 (1983 Estimated)

% Sales: 70 (hardware); 30 (software)

Leases Hardware: Yes, 10%

Number Of Stores: 1

Projected # Stores: 1 (1/85)

Private Label: Software, Supplies, Accessories

Services: Repair/Educational/On-Site Training

Year Founded: 1981

RITA DAVIDSON - President, Buyer.

NFR Computer Room, 87-32 253rd St.

Telephone Unpublished

Product Lines: Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices; Supl. System Units

Bellerose 3  
11426

Computer Models: Commodore VIC-20

Sales: \$2,600,000 (1983 Estimated)

% Sales: 75 (hardware), 25 (software)

Number Of Stores: 3

Projected # Stores: 3 (1/85)

Private Label: Software, Supplies

Services: Repair/Educational/Hot-Line/On-Site Training

Year Founded: 1981

NICK ROSSINI - President, Buyer.

This is to certify that the above list contains planted errors in the 1984 Directory of Computer + Software Retailers published by Business Guides, Inc.

DATE: 9 November 84

TITLE: Editor - New Property Development

11/9/84

NAME: Victoria M.K. Burdick  
SIGNATURE: /s/ Victoria M.K. Burdick

Sworn to and attested by

/s/ Barbara Hochberg  
**BARBARA HOCHBERG**  
[Notary Seal]

# COMPUTER + SOFTWARE DISTRIBUTORS

<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
California Digital, Inc. Carson, CA	213 643-7440	213 644-7440
Renaissance Technology Corp. Concord, CA	Gary Salvador - VP, GM.	Gary Salvadori - VP, GM.
Waybern Corp. Garden Grove, CA	Raymond Carr - Material Control Mgr.	Raymonde Carr - Material Control Mgr.
Premier Source Distributing Laguna Hills, CA	Don Bledsoe - Sales Mgr.	Don Blodsoe - Sales Mgr.
Basic Systems, Inc. Inglewood, CA	Dave Ellis - Sales Mgr, Americal International Distributors. Michael Georgoff - Buyer, American International Distributors.	Both names should not have appeared.

142

<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
American Computers & Engineers, Inc. Los Angeles, CA	Ramune Ambrozaidis - General Mktg.	Ramune Ambrozaitis - General Mktg.
Minicom Systems Los Angeles, CA	1626 Wilshire Blvd.	1636 Wilshire Blvd.
Digital Distributors Santa Cruz, CA	Santa Cruz 59060	Santa Cruz 95060
Softsmith Corporation Union City, CA	Rob Lundgran - VP, Sales, GM. LJG, Inc.	Rob Lungren - VP, Sales, GM. IJG, Inc.
IJG, Inc. Upland, CA	Jacksonville 32202	Jacksonville 32203
Cain & Bultman, Inc. Jacksonville, FL	321 228-8550	321 226-8850
KNE Resources Elk Grove Village, IL	Art Herbstam - Marketing Mgr.	Art Herbstman - Marketing Mgr.
Kaltronics Distributing Inc. Northbrook, IL		

143



<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
Diversified Micro-computer Products, Inc. Prospect Hts, IL	Harlan McDaniels - VP.	Harlan McDaniel - VP.
Price Electronics Corp. Glenview, IL	204 Carpenter, Wheeling, 60090	1813 Elmdale Ave Glenview, 60025
International Computer Group Merriam, KS	9170 W. 57th St.	9174 W. 57th St.
Interstate School Supply Co., Inc. Baton Rouge, LA	1835 River Rd. W. John Page - VP.	1835 River Rd. North John Pace - VP.
Eastern Software Distributors Baltimore, MD	Brook Connor - Buyer.	Brook Cumor - Buyer.
Management Information Systems Corp. Baltimore, MD	Antoinette Sohols - Mktg, Mgr.	Antoinette Sorolis - Mktg, Mgr.

144

<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
Apex Resources, Inc. Brookline, MA	Bill Wirtha - GM.	Bill Wirta - GM.
Newmar Computer Supplies Lynnfield, MA	Robert Schermaehorn - Owner, President, Buyer	Robert Schermerhorn - Owner, President, Buyer
Draves & Barke Systems Eden Prairie, MN	Draves & Barke	Draves & Barke Systems
Prairie Associates, Inc. Minneapolis, MN	Prairie Associates, Inc.	Prairie Associates, Inc.
Woodbury Computer Associates, Inc. Paramus, NJ	Leonard Kwainetz - Treasurer	Leonard Kwatinetz - Treasurer.
Microwave Distributing Pompton Hills, NJ	Steve Schwcbel - Sales Mgr.	Steve Schwebel - Sales Mgr.
TNL Data Services, Inc. New York, NY	Yaus Rezuik - Software Mgr.	Yau Rezuik - Software Mgr.
Promark Peripherals Ronkonkoma, NY	Romkonkoma	Ronkonkoma

145

<u>Company Name City, State</u>	<u>As Appears In 1984 Edition</u>	<u>Correct Information</u>
CSI Distributors Spring Valley, NY	Elaine Toltelman - VP.	Helaine Toltelman - VP.
Scheweber Electronics Westbury, NY	Dave Marrow - ExVP, Sales.	Dave Morrow - ExVP, Sales.
Scherer's Dubline, OH	Scherer's	Scherer's Place

146

This is to certify that the above list contains planted errors in the 1984 Directory of Computer + Software Retailers by Business Guides, Inc.

DATE: 9 November 1984  
TITLE: Editor-New Property Development

NAME: Victoria M.K. Burdick  
SIGNATURE: /s/ Victoria M.K. Burdick

11/9/84

Sworn to and attested by

/s/ Barbara Hochberg  
**BARBARA HOCHBERG**  
[Notary Seal]

#### COMPUTER + SOFTWARE RETAILERS

<u>Company Name City, State</u>	<u>As Appears In 1985 Edition</u>	<u>Correct Information</u>
Business & Home Computers Anaheim, CA	Anaheim	Anaheim
Loha Computers Anaheim, CA	Anaheim	Anaheim
CPU Business Systems, Inc. Cucamonga, CA	9155 Archibald, Suite 4	9155 Archibald, Suite H
Pathfinder Business & Computer Centre, Ltd. Encino, CA	David Silves	David Silver
WEI Computer Central Eureka, CA	WEI Computer Central	WCI Computer Central
Hundley Company Glendale, CA	Jeff Fairbank	Fred Wong
Gateway Computer Center Huntington Beach, CA	Gateway Computer Center	Gateway Computer Systems

147



<u>Company Name City, State</u>	<u>As Appears In 1985 Edition</u>	<u>Correct Information</u>
The Computer Store of Oakland Oakland, CA	Alex Stern Poulsen Frank Scudero	Alfred Hawkins Alfred Johnson
Software and More Orange, CA	Jill Dervado	Dan Schaaf
Filco Computer Center Sacramento, CA	Schair Kaczmarek	Sohair Kaczmarek
Ecom West Sacramento, CA	Mike Bolma Jerry Liquori	Mike Balma Jerry Liguori
Businessland San Jose, CA	Roy Bryant	Roy Brant
CompuShack San Ramon San Ramon, CA	Shadrah Shah	Shadrad Shah
Agernal Corp. Torrance, CA	20695 South Western Ave., Ste. 124	Suite 128
Computerland Torrance, CA	Linda Wuestmar	Linda Wuestman

148

<u>Company Name City, State</u>	<u>As Appears In 1985 Edition</u>	<u>Correct Information</u>
Software Galeria Tustin, CA	The Software Service Center	Software Galeria
Computer Expo, Inc. Westwood Village, CA	1019 Galey Rd.	1019 Gayley Rd.
Bright Ideas Creative Computer Center [illegible location]	Mary Ann Morrow	Mary Ann Morro
Digital Dimensions Vernon, CT	375 Hartford Tpke. 203 872-8569 Andrea Olesnevich	216 Hartford Tpke. 203 646-4291 Andrea Tomko
Computerease, Inc. Wallingford, CT	Doug Langois	Doug Langlois
Computer Resources Weathersfield, CT	Weathersfield	Weathersfield
ASCII Group, Inc. Washington, DC	May Nadaff	May Naddaf

149

<u>Company Name City, State</u>	<u>As Appears In 1985 Edition</u>	<u>Correct Information</u>
The Computer Store of South Florida, Inc. Boca Raton, FL	Edward Green	Edward Greene
Inacomp Computer Center Fort Lauderdale, FL	Laurence E. White	Lawrence E. White
Computer System Resource Gainesville, FL	Brian Levine	Hal Merchant
Computer Design, Inc. Hollywood, FL	Ysioro J. Fernandez	Ysidro J. Fernandez
Micro Works Naples, FL	Carl Hanover	John King
Entre North Miami, FL	Alan Grose	John Harvey
International Calculator & Computer Orlando, FL	2914 Lorraine Drive	2914 Clorrine Drive
Data Base Plantation, FL	Eric Josocwitz	Rob Yorke

150

<u>Company Name City, State</u>	<u>As Appears In 1985 Edition</u>	<u>Correct Information</u>
The Computer Chip Sarasota, FL	Doug Reddy	Matt Leona
Instant Software Acton, MA	Richard Tubman Peggy Burns	Wayne Greene Charles Ledahm
Execon Burlington, MA	68 Middlesex Turnpike Burlington, MA 01813 617 229-6666	677 Worcester Rd. Natick, MA 01760 617 655-9222
Ferranti-Dege, Inc. Cambridge, MA	1300 Massachusett Ave.	1300 Massachusetts Ave.
Computerland	Steve Watson	Jeff Gilbert
Micro-Macro Systems, Inc. New York, NY	Robert Levey	Robert Levy
Software Solutions New York, NY	Nathan Schartz	Nathan Schwartz
Leon's Computer Mart Rochester, NY	14608	14604
Video Computer Center Rome, NY	Mark Daily	Jim Smith

151

<u>Company Name</u> <u>City, State</u>	<u>As Appears In 1985 Edition</u>	<u>Correct Information</u>
Computer Headquarters Selden, NY	1215 Middle Country Rd.	1245 Middle Country Rd.
William Tell Systems, Inc. Houston, TX	Steve Krztschak	Steve Kretshek
World of Computers Houston, TX	8282 Bellaire Blvd., Ste. 159	Ste. 154
Pan American Electronics Missouri, TX	Missouri	Mission
Computerland Richardson, TX	88 S. Greenville St., Ste. 303	888 S. Greenville St., Ste. 303
Computerland Wichita Falls, TX	Ron Schroegg	Ron Schrogs
Krongold's Computer Center, 12 Littlejohn Rd. Telephone: Unpublished Product Lines: Computer Supl; Modems; Monitors; Printers; Software (Business); Software (Educational); Software (Entertainment); Software (Game); Software (Personal); Software (Systems); Storage Devices; System Units Computer Models: Commodore VIC-20; IBM PC, PC-XT Sales: \$1,750,000 (1984 Estimated)		Englishtown 1 07726

152

% Sales: 70 (hardware); 30 (software)  
 Number Of Stores: 1  
 Projected # Stores: 1 (3/86)  
 Private Label: Software, Supplies, Accessories  
 Services: Repair/Educational/On-Site Training  
 Year Founded: 1981  
 L. KRONGOLD - President, General Buyer.

Rossini's Computer Room, 87-32 253rd St.  
 Telephone: Unpublished  
 Product Lines: Computer Supl; Modems; Monitors; Printers; Software (Business);  
 Software (Educational); Software (Entertainment); Software (Game); Software  
 (Personal); Software (Systems); Storage Devices; System Units  
 Computer Models: Commodore 64; IBM PC, PC-XT  
 Sales: \$2,600,000 (1984 Estimated)  
 % Sales: 75 (hardware); 25 (software)  
 % Of Business: 60% Walk-in; 40% Outside Sales  
 Number Of Stores: 3  
 Projected # Stores: 3 (3/86)  
 Private Label: Software, Supplies  
 Services: Repair/Educational/Hot-Line/On-Site Training  
 Year Founded: 1981  
 R. ROSSINI - President, General Buyer.

153



Edward's Computer Room, 1414 Willow St.

Western Spring 1  
90558

Telephone: Unpublished

Product Lines: Computer Acc; Computer Supl; Modems; Monitors; Printers;  
Software (Business); Software (Educational); Software (Entertainment); Software  
(Personal); Software (Systems); Storage Devices; System Units  
Computer Models: Commodore 64; IBM PC, PC-XT

Sales: \$1,000,000 (1984 Estimated)

Number Of Stores: 1

Services: Repair/Educational

Year Founded: 1984

R. EDWARDS - President, GM, General Buyer.

154

This is to certify that the above list contains planted errors in the 1985 Directory of  
Computer + Software Retailers published by Business Guides, Inc.

Date: 30 May 85

TITLE: Senior Editor - New Property Development NAME: Victoria M.K. Burdick  
dick SIGNATURE: /s/ Victoria M.K. Bur-

Sworn before me this

[illegible]

/s/ Grace D'Antoni

[Notary Seal]

1986 Computer Directory: Planted Errors

- 1- Protecto Enterprises - Dianna PARAMSKY for Paramski (Barrington, Ill.)
- 2- Computerland (Honolulu, Hawaii) - Betty BELLANGER for Belanger.
- 3- Preferred Systems (Gainesville, GA) - Don DELANEY for Delany
- 4- Discount Computer Supplies (Atlanta, GA) - Tim DUGAN for Dugan
- 5- MicroAge Computer Store (West Palm Beach, FL) - Cindy DUDDWICK for Dudwick
- 6- Computer Center of Panama City (Panama City, FL) - Mardre CHAMBLISS for Chamb-  
less
- 7- Entre Computer Center (Lakeland, FL) - Brian EVERHARDT for Everhart
- 8- World Central Computers (Richmond, Ind.) - Richard RANKEN for Rankin
- 9- Software City, (Davenport, Iowa) - KIMBERLEY Road for Kimberly
- 10- Midwest Computer Assocs (Lenexa, Kansas) - Hank DAMME for Damm
- 11- Commonwealth Computers (Overland Park, Kansas) - David FRANKLYN for Franklin
- 12- Computer Market (Bowling Green, Kentucky) - Marion SIMONS for Simmons
- 13- Compco Computer Center (Shreveport, LA) - Al YANTES for Yantis
- 14- Valcom Computer Center (Portland, Maine) - Forrest Avenue for Forest

155

- 15- The Microcomputer Center Inc. (Baltimore, MD) - Belaire Road for Belair
- 16- Computerland (Rockville, MD) - Gary FREDERIC for Frederick
- 17- Astrolabe (Orleans, Mass.) - Gary CHRISTIN for Christen
- 18- Computer Marketplace (Tewksbury, Mass.) - Joseph L. CLARK for Clarke
- 19- Computer Connection (Farmington Hills, Mich) - Thomas TAILOR for Taylor
- 20- Computronix Corporation (Midland, Mich) - Earl MCRRISS for Morris
- 21- Micro Station Inc. (Southfield, Mich) - Jerry GOLDBURG for Goldberg
- 22- Rite Way Enterprises (Warren, Mich.) - Ronald KEELER for Keiler
- 23- Computer Professionals (Burnsville, Minn.) - Mike MACGRAW for McGraw
- 24- Computer Mart (Springfield, Missouri) - Milton RHOADES for Rhoads
- 25- Ashford Computer Center (Saint Louis, Missouri) - Craig TETLY for Tetley
- 26- Emery Computers (Great Falls, Montana) - Ken DA COSTA for De Costa
- 27- Alpha-Omega Computer Co. (Aliquipoa, Penn.) - Mike PASTERICK for Pasterik
- 28- Future Systems Inc. (Charleston, SC) - Janice HARTE for Hart
- 29- Computerland (Rapid City, SD) - Dave MEYERS for Meyer

- 30- E.C.S. Business Systems (Oak Ridge, TN) - Jack MACCOMBER for Macomber
- 31- Computerland (Amarillo, TX) - Mark TROWEBRIDGE for Trowbridge
- 32- United Business Machines Inc. (Houston, TX) - E. Ali KAMALL for Kamal
- 33- FNS Computer Service Inc. (Texarkana, TX) - Bill SCHRAEDER for Schrader
- 34- Chaney Computer Assocs. (Grafton, VA) - Perk CRAINE for Crain.
- 35- Virginia Micro Systems Inc. (Woodbridge, VA) - Russ THOMSON for Thompson.
- 36- Computers & Applications (Bellevue, WA) - David CHOY for Choi
- 37- Empire Electronics (Seattle, WA) - Thomas GEERE for Geer
- 38- The Computer Corner, Inc. (Morgantown, WV) - Bill DODRILL for Dodrill
- 39- MicroAge Computer Store (Lacrosse, Wisc.) - John SARNOWSKY for Sarnowski
- 40- Alpine Computer Products (Casper, WY) - S. CARLY for Carley

PLANTED COMPANIES:

- |  |   |
|--|---|
| 1- Horizons Inc.<br>87-32 253rd Street<br>Bellerose, N.Y.<br>(In Book)                                   | 2- Edward's Computer Center<br>1414 Willow Street<br>Western Springs, IL 60558<br>(In Book)         |
| 3- Donoghue's Computer Emporium<br>606 North Larchmont Blvd.<br>Los Angeles, CA 90004<br>(Not Published) | 4- Mitchell's Computer Village<br>444 North Michigan Avenue<br>Chicago, IL 60611<br>(Not Published) |

158

This is to certify that the above are planted errors in the 1986 Directory of Computer & Software Retailers, published by Business Guides, Inc., 425 Park Ave., NYC

Date: 5/21/86

Title: EDITOR

Sworn before me this  
1st day of May 1986.

/s/ Grace D'Antoni

[Notary Seal]

Name: John Leavy  
Signature: /s/ John Leavy

159

(Exhibits C, E, F, H, I and J  
and Certificate of Service  
Omitted in Printing)

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 (415) 772-6000

Attorneys for Plaintiff,  
 BUSINESS GUIDES, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	)	No. C866164 SC
	)	
Plaintiff,	)	DECLARATION
	)	OF VICTORIA
v.	)	M.K. BURDICK
	)	
CHROMATIC	)	FILED
COMMUNICATIONS	)	APR 27 1987
ENTERPRISES, INC. and	)	
MICHAEL SHIPP,	)	
	)	
Defendants.	)	

I, VICTORIA M. K. BURDICK, DECLARE AS FOL-  
 Lows:

1. The following declaration is based on my personal knowledge. If called upon to testify, I could testify competently as to the matters set forth herein.

2. I am a Sales Representative at Mail Marketing Resources, which is a division of Business Guides, Inc., plaintiff herein. My job is to help promote sales of Business Guides' products through contacts with possible buyers. Prior to that I was an editor with Business Guides responsible for publication of the Directory of Computer

+ Software Retailers. I have submitted two affidavits to the Court in connection with plaintiff's application for a temporary restraining order ("TRO") in the above-entitled matter. In addition, I testified before Chief Magistrate Woelflen on January 29, 1987, in connection with the Court's inquiry regarding sealed affidavits submitted to the Court in support of plaintiff's application for a TRO. Because I believe that important facts regarding Business Guides' "seeds" either have not been fully presented or have been misunderstood, I respectfully submit this additional affidavit.

3. Business Guides publishes 18 directories for use by businesses to identify markets and as a reference to companies who do business in a particular area of commerce. Business Guides has over 30 major competitors who publish similar directories. The only practical way to tell whether competitors have copied Business Guides' publications is to use seeds, i.e., entries which contain incorrect information, in our publications. If these seeds appear in a competitor's directory, Business Guides believes that it is likely that the competitor copied Business Guides' directory.

4. Seeds are commonly used in the publishing industry to detect unauthorized copying. Business Guides uses seeds in each of its publications. Normally, the seeds are thought out ahead of time, and intentionally placed in Business Guides' directories. The person who is responsible for devising the seeds prepares a "master seed list" which lists the seeds used. The policy at Business Guides is for the person who prepared the seed list to sign and certify the list before a notary public in case

the authenticity of the seed list in questioned. My understanding is that the seed lists are prepared in this matter in case of the need to litigate against a defendant who has copied Business Guides' materials without authorization. I am aware that the fact that seeds appeared in a competitor's publication has been used by Business Guides in previous cases as evidence of copyright infringement. I am informed that this was the case in *Chain Store Business Guide v. Wexler*, 79 F. Supp. 726 (S.D.N.Y. 1948). Recently, I prepared and executed my affidavit in preparation for a case against R.R. Bowker, then a division of Xerox Corporation. In that case the evidence of infringement was based upon seed lists in our files.

5. Before November, 1985 when I moved to Sales, my job was to research possible listings in Business Guides' directories. I did this by making telephone calls to possible listings, as well as reviewing questionnaires sent to the companies regarding details of the companies' businesses. These questionnaires, prepared by Michael Lambe, are sent each year to companies listed in our directories. The questionnaires typically list information about the companies which we gather the previous year. The questionnaires request that the company update or revise the information printed. Sometimes, the companies fill out the questionnaires and send them back to us. Other times, staff we hire to conduct telephone interviews will call the companies to gather the information requested on the questionnaires. "Telephone supervisors" sometimes will double check information obtained by the telephone staff. Editors of the directories also may call businesses to request information.

6. Of the ten seeded entries in plaintiff's directories which Business Guides originally believed defendants had copied without authorization, seven derived from the "master seed list" for the 1984 Directory of Computer + Software Retailers, which was personally prepared and certified by me. Every one of the six seeded entries which Chief Magistrate Woelflen criticized in his April 3, 1987 Report and Recommendation came from the 1984 master seed list.

7. I believe that the facts surrounding my preparation of the 1984 master seed lists will help to clear up many of the questions raised by the Chief Magistrate. The 1984 master seed list was prepared differently from any other master seed list of Business Guides with which I am familiar. I did not explain the significance of the preparation of the 1984 master seed list to the Chief Magistrate because I was not asked a question by counsel or by the Court to which an explanation would be responsive. In addition, I have recently realized the significance of the manner in which the 1984 master seed list was prepared during investigative discussions with attorneys from Heller, Ehrman, White & McAuliffe regarding preparation of that list.

8. The 1984 master seed lists for "Computer + Software Retailers" and "Computer + Software Distributors" were prepared *after* Business Guides 1984 directory actually had been published. None of the "seeds" listed in the 1984 master seed lists were intentionally conceived as seeds, with the exception of the two type "A" (i.e., totally fictitious) company entries: "Davidson's Computer Center" and "NFR Computer Room". All of the remaining 1984 type "B" (i.e. only certain information incorrect)



seeds were listings of what I believed to be typographical or editorial errors in the 1984 directory.

9. Business Guides' 1984 Directory of Computer and Software Retailers was published in April, 1984. A true and correct copy of the cover, title page and page showing the printing date as "April 1984" from the 1984 Directory is attached hereto as Exhibit "A". The 1984 master seed lists, true and correct copies of which are attached hereto as Exhibit "B" were prepared in November 1984. I prepared the 1984 master seed lists in November, 1984 under a great deal of time constraint, as the directory already had been in print for several months, and our publisher at the time, Lee Appel, wanted to document additional type B seeds immediately.

10. Mr. Appel directed me to create the 1984 seed list by comparing the filled-out questionnaires Business Guides used to solicit information regarding companies listed in its directory with the 1984 directory *as already published* and to list as "seeds" any entry in the directory which was different from the information contained in the questionnaires. I did this without supervision at Business Guides and, to my knowledge, without advice of counsel. In hindsight, if the 1984 master seed lists had been prepared in the usual manner, certain entries should not have been listed as seeds. However, I assumed at the time that the information set forth on the questionnaires was correct, even though such questionnaires were prepared by individuals other than myself.

#### EAGLE MICRO SYSTEMS

11. The entry in the 1984 questionnaire received from Eagle Micro Systems, Inc., listed that company as

being located on Gay Street, Auburn, Alabama, 36830. A true and correct copy of that questionnaire is attached hereto as Exhibit "C". The zip code for Eagle [36830] was erroneously typed as 63830 in plaintiff's 1984 directory. Therefore when I was creating the 1984 seed list, I found this discrepancy and I intended to list on the master seed list as "correct information" the zip code as it appeared on the questionnaire [36830]. However, as the court will note from Exhibit A, somehow the zip code 36850 erroneously was printed on the master seed listed as the "correct information." The zip code as it appeared in the 1984 published directory [63830] was listed as "seeded" information.

#### COMPUTERLAND

12. In Business Guides' 1983 directory, the address for Computerland was erroneously listed as 3845 Bay Road. A true and correct copy of a page from the 1983 directory showing the listing for Computerland is attached hereto as Exhibit "D". This 1983 information was printed on the 1984 questionnaire and sent to Computerland for revisions and updating in accordance with our standard procedure. However, as the seed list shows, I continued to believe the 3845 was the "correct" information. Apparently, Computerland failed to notice and change Business Guides' typographical error on the 1984 questionnaire. Somehow someone at Business Guides, probably the telephone supervisors, corrected the information in the 1984 Directory and listed the company's address as 3545 Bay Road. However, the information was not corrected on the 1984 questionnaire. Thus, following my instructions, I listed the 3545 address as incorrect or a



"seed," when in fact it was the correct address. Unfortunately, we are unable to locate the 1984 Computerland questionnaire after thorough and repeated searching.

#### COMPUTER DISCOUNT OF NEW JERSEY

13. I listed as a seed in the 1984 master lists Computer Discount of New Jersey, in West Milford, New Jersey. The name "Computer Discount of New Jersey" was given to Business Guides by Mike Andress of Computer Discount who stated that the company's *retail store* was called Computer Discount of New Jersey. Its mail-order business was called Computer Discount of America. A true and correct copy of the 1984 questionnaire for Computer Discount of New Jersey is attached hereto as Exhibit "E". That questionnaire shows that the company intended to be listed as Computer Discount of New Jersey for retail store directories.

14. When I compared the questionnaire to the 1984 directory in preparing the seed list, I saw a discrepancy between the store name on the questionnaire and the name printed in the Business Guides directory. I therefore included "Computer Discount of America" on the 1984 master seed list. If I had prepared the 1984 master seed list as Business Guides has prepared its other seed lists, i.e., *intentionally* creating seeds in advance rather than including typographical errors after the fact, I do not believe I would have used Computer Discount of America as a seed. However, because I merely checked discrepancies between the questionnaires and the directory, I included the entry as a seed.

15. Attached hereto as Exhibit "F" is the 1985 questionnaire filled out by Joseph Russo of Computer Discount of New Jersey. There, Mr. Russo crossed out the name of Computer Discount of America, and put the name "Computer Discount of New Jersey". He also crossed out the column which had stated "% Sales in Mail Order: 25" to "% Sales in Mail Order: 0". However, he listed his return address as:

JOSEPH RUSSO  
Computer Discount of America  
15 Marshall Hill Road  
West Milford, NJ 07480

This questionnaire shows that there were two separate companies formerly owned by Joseph Russo. One was a retail store, the other was a mail-order business. Defendant's directory listed the name of the mail-order company "Computer Discount of America," in its directory of computer stores.

16. I recently obtained and reviewed a pamphlet from Computer Discount of New Jersey showing, among other things, that the company refers to its retail store operation as "Computer Discount of New Jersey". This pamphlet is attached hereto as Exhibit "G".

17. With respect to the difference in addresses listed by defendant and plaintiff for Computer Discount of America and Computer Discount of New Jersey, I am informed and believe that the retail store and mail-order company do business at addresses next door from each other at the same shopping mall. As can be seen from Exhibit "E", Mr. Russo wrote a different street address for Computer Discount of New Jersey than had appeared for Computer Discount of America the previous year.

### PREMIER SOURCE

18. I included the name of the manager of Premier Source Distributing, Inc. as a seed in the 1984 master seed list. The 1984 Premier Source questionnaire had the last name of the manager spelled as "Blodsoe". A true and correct copy of the 1984 questionnaire is attached hereto as Exhibit "H". Business Guides' 1984 directory listed the name as "Bledsoe".

19. I understand that the Chief Magistrate doubted the legitimacy of the 1984 questionnaire for Premier Source. I am surprised and saddened that the Chief Magistrate would question our integrity to this degree. It is my firm belief that the document was filled out by someone at Premier Source. I say that for the following reasons: the document in question does not bear the initials of one of Business Guides' employees, as is our standard practice, further, the document bears a "received" stamp, not used by our company, in the upper right hand corner which appears to be dated October 28. Neither I, nor to my knowledge, anyone at Business Guides, has fabricated or invented or modified the questionnaire which exists in our files.

20. Subsequent questionnaires received from Premier Source indicated that the true spelling was "Bledsoe". Thus, Business Guides' 1985 edition lists the name as "Bledsoe". Indeed, the 1986 questionnaire was filled out by Mr. Bledsoe himself. That questionnaire, signed by Mr. Bledsoe on January 8, 1986, is attached hereto as Exhibit "I". The questionnaire bears a "received" stamp just as does Exhibit "H".

21. I have reviewed the Chief Magistrate's Report and Recommendation. I understand that the Magistrate stated in that Report:

[P]laintiff must first persuade us that Bledsoe's company incorrectly spelled his name on the questionnaire. More importantly however plaintiff must persuade us that it was merely coincidental that plaintiff *chose to alter, among thousands of listings* contained in the directory, first, this particular listing; second, this particular word in the listing; and third, this particular letter in the word, resulting in an alteration which turned out to be the true spelling of this man's name.

We note plaintiff has asked us to believe that another very similar coincidence occurred in seed number 2. We find the occurrence of two such similar and incredible coincidences difficult to believe.

I believe that the Chief Magistrate's incredulity results from the fact that it was not explained that the 1984 seed list was prepared by finding typographical or editorial errors in the 1984 directory. Business Guides did not "choose to alter" any of the letters or numbers which formed the basis of its 1984 type "B" seeds. *The way Business Guides prepared its 1984 seed list caused the Bledsoe/Blodsoe seed issue. No coincidence was involved.* Whenever telephone supervisors or editors learn of errors (or outdated information) on the questionnaires, they correct the information in the published directory. However, they must not necessarily correct the information on the questionnaires themselves. If this were the case, I would knowingly have listed the *correctly* edited information as an incorrect seed on the 1984 seed list.



### PRICE ELECTRONICS

22. I also included in the 1984 master seed list the business address of Price Electronics Corporation in Illinois. The 1984 questionnaire listed Price Electronics' *mailing* and business address as 1813 Elmdale Avenue, Glenview, Illinois 60025. The questionnaire also noted that Price Electronics was moving from 1813 Elmdale Avenue, Glenview, Illinois 60025 to 204 West Carpenter Avenue, Wheeling, Illinois 60090. A true and correct copy of the 1984 Price Electronics' questionnaire is attached hereto as Exhibit "J".

23. When I compared the already printed 1984 directory to the 1984 Price Electronics' questionnaire, I noticed that the address as printed in the directory (the future address) was other than the mailing address listed on the questionnaire. Following my instructions, I therefore included the address that Price Electronics was going to move to as a "seed."

### YES COMPUTER

24. Two of the three seeds which originally were included in the photocopied seeds attached to my sealed affidavit in the above-entitled matter, but subsequently removed from the list of seeds described in Michael Lambe's Sealed Supplemental Affidavit, also came from the 1984 master seed lists, and were the result of my finding what I believed to be typographical or editorial errors in the 1984 directory when I prepared the 1984 seed list in 1984. In the case of Yes Computer, the 1984 directory stated the company's address, in part, as follows: College Station, Texas 77840. The zip code on the

questionnaire was 77802. A true and correct copy of which is attached hereto as Exhibit "K". Because I found a discrepancy between the 1984 questionnaire and the 1984 directory as printed, I listed the printed zip code of 77840 as an incorrect seed. In fact, 77840 is the correct zip code for College Station, Texas.

### COAST COMPUTER CENTER

25. I also included in the master seed list for 1984 the name of the general manager for Coast Computer Center in Costa Mesa, California. The information on the 1984 questionnaire for Coast Computer which I reviewed listed the name Steve Purves. A true and correct copy of that 1984 questionnaire is attached hereto as Exhibit "L." However, the name which appeared in the 1984 Directory was Mike Seigrist, Jr. Therefore, because I found a discrepancy between the questionnaire and the Directory as printed, I listed the name Mike Seigrist, Jr. as an incorrect seed on the 1984 master seed list.

### SOFTWARE SERVICE CENTER

26. I included a company called "The Software Service Center" as a seed in the 1985 master seed list. I prepared the 1985 master seed list prior to publication of Business Guides' 1985 directory but based the seed list on discrepancies between the proof pages for the publication and the 1985 questionnaire. I understand that all of the seed lists for Business Guides' publications were prepared the usual way, i.e. intentionally creating seeds *before* entering data into the word processing system. I did it this way in 1985, because I had done it the same



way in 1984. Nobody supervised me in preparing the master seed lists. 1985 was the last year I prepared the master seed lists. John Leavy prepared the master seed list for the 1986 Directory of Computer + Software Retailers. My understanding is that he prepared that seed list ahead of time by intentionally altering names of individuals in listed companies.

27. The seeded, i.e. incorrect name of the company was intended to be "Software Galeria". Unfortunately, I transposed the fictitious and real name in my handwritten draft of the 1985 seed list, so that the correct name appears on the seed column, while the incorrect name appears on the "correct information" column. My handwritten notes from 1985 evidencing the unintended transposition are attached hereto as Exhibit "M". I am informed that when Mr. Lambe discovered this mistake, he withdrew the listing for "The Software Service Center" as one of the seeds upon which plaintiff based its application for a temporary restraining order.

29. Other than noticing that defendant had copied Business Guides' totally fictitious seed, NFR computer room in its 1985 Directory, I did not participate in identifying for Business Guides' attorneys specific seeds which Business Guides Believed plaintiffs had copied until after Judge Conti had ruled on plaintiff's application for a TRO, although I did review the seeds list once it had been compiled.

30. My understanding is that Michael Lambe, Richard Rossini and Gerard Loesch were the people at Business Guides who compared defendant's directories and diskettes to Business Guides' master seed list for the

years 1984, 1985 and 1986 in an effort to identify seeds which Business Guides believed defendant had copied. It was only after Judge Conti acted on the TRO that I became involved in examining the 1984 master seed list as described above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25 day of April, 1987, at New York, New York.

/s/ Victoria M. K. Burdick  
Victoria M. K. Burdick

(All Exhibits and Certificate of Service  
Omitted in Printing)

---

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Attorneys for Plaintiff,  
 BUSINESS GUIDES, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,	)	No. C866164 SC
	)	
Plaintiff,	)	DECLARATION
	)	OF RICHARD
v.	)	J. ROSSINI
	)	
CHROMATIC	)	FILED
COMMUNICATIONS	)	APR 27 1987
ENTERPRISES, INC. and	)	
MICHAEL SHIPP,	)	
	)	
Defendants.	)	

I, RICHARD J. ROSSINI, DECLARE AS FOLLOWS:

1. This declaration is based on my personal knowledge. If called upon to testify, I could testify competently as to the matters set forth herein.

2. I am employed by Business Guides, Inc., plaintiff in the above-entitled action as Director of Research Operations. Attached hereto as Exhibit "A" are true and correct copies of my forms W-2 and W-4, evidencing my employment with plaintiff.

3. One of the means by which Business Guides attempts to prevent unauthorized copying or use of its business directories is to plant "seeds," i.e., business listings with incorrect information, in its directories. During the course of my employment, I participated in the preparation of what Business Guides refers to as type "A" seeds. By this we mean seeds which are totally fictitious companies, invented by Business Guides. I agreed to use my name, and in certain cases names of members of my family, as well as my home address to assist in preparation of the type A seeds. Type A seeded companies, using my name and/or address, have been placed from time to time in several directories published by Business Guides, Inc.

4. One such fictitious seed was listed in Business Guide's 1986 Directory of Value Added Resellers:

Richard Rossini  
 THE ANSWER MAN  
 87-32 253rd Street  
 Bellerose, New York 11426

A true and correct copy of the 1986 Directory of Value Added Sellers showing that seeded entry is attached hereto as Exhibit "B".

5. I am unaware of any company which does business by the name of "THE ANSWER MAN" in Bellerose, New York. It is impossible that any company does business at 87-32 253rd Street, Bellerose, New York 11426, because that is my home address. True and correct copies of my driver's license, New York City Property Assessment Form (listing the City of Jamaica rather than the village in Jamaica named Bellerose) and Homeowner's Insurance statement for 1986-1987 evidencing that I own



a residence at 87-32 253rd Street, Bellerose, New York, are attached hereto as Exhibit "C".

6. Mr. Michael J. Shipp, publisher of defendant Chromatic Communications' "THE PERSONAL COMPUTER - AN INDUSTRY SOURCE BOOK" has, on several occasions, sent letters to me at my home address in care of the fictitious company "THE ANSWER MAN." A letter dated October 24, 1986 from Mr. Shipp sent to me care of "THE ANSWER MAN" is attached hereto as Exhibit "D". A promotional letter dated December 8, 1986 from Mr. Shipp sent to me in care of "THE ANSWER MAN" is attached hereto as Exhibit "E". I believe there is no conceivable way Mr. Shipp could have learned the fictitious name and address for "THE ANSWER MAN" other than by having taken the seeded name in Business Guides' 1986 Directory of Value Added Resellers.

7. Another seeded entry which appeared in Business Guides' 1984 edition of Computer and Software Retailers under the section New York, 1146, was listed as follows:

NFR Computer Room, 87-32 253rd Street. Bellerose  
Telephone Unpublished  
Product Lines: Modems; Monitors; Printers;  
Software (Business); Software (Educational);  
Software (Entertainment); Software (Game);  
Software (Personal); Software (Systems); Storage  
Devices; Supl. System Units

Computer Models: Commodore VIC-20  
Sales: \$2,600,000 (1983 Estimated)  
% Sales: 75 (hardware), 25 (software)  
Number of Stores: 3  
Projected # Stores: 3 (1/85)

Private Label: Software, Supplies  
Services: Repair/Educational/Hot-Line/  
On-Site  
Training  
Year Founded: 1981  
NICK ROSSINI-President, Buyer

True and correct copies of the page from Business Guides' 1984 master seed list certified by Victoria M.K. Burdick before a notary public, and the page from Business Guide's 1984 directory, both showing the seeded entry, are attached hereto as Exhibits "F" and "G", respectively.

8. NFR Computer Room is a totally fictitious name, chosen by Business Guides. "NFR" actually are the initials of my daughter, Nicole Favat Rossini. Further, the name "Nick Rossini" listed in plaintiff's seed and defendants' directory as being the "President" of "NFR Computer Room," is also a variation on my daughter's name. True and correct copies of my daughter's birth and baptismal certificates, evidencing her name, are attached hereto as Exhibit "H".

9. I am aware of no company doing business as "NFR Computer Room" in Bellerose, New York. It is impossible for any company to be doing business at 87-32 253rd Street, Bellerose, New York, as this is my home address, as previously described. No telephone number is listed on the seed to avoid receiving telephone calls at my house.

10. Defendant copied this seeded entry almost verbatim in its 1985 edition of THE PERSONAL COMPUTER - AN INDUSTRY SOURCE BOOK. A true and correct copy of a page from that publication showing the "NFR Computer Room" entry is attached hereto as Exhibit "I".



11. I believe that the fact that defendant copied an entirely fictitious entry in Business Guides' directory alone is substantial evidence that defendant infringed plaintiff's copyrighted directory. Indeed, I can think of no other explanation for the fact that the entirely fictitious entry appears in defendant's 1985 directory.

12. Another seeded entry which appears in Business Guides' 1985 edition of Directory of Computer + Software Retailers under the section New York, 1146, is listed as follows:

Rossini's Computer Room, 87-32 253rd St. Bellerose  
 Telephone: Unpublished  
 Product Lines: Computer Supply;  
 Modems; Monitors;  
 Printers; Software (Business); Software  
 (Educational); Software (Entertainment); Soft-  
 ware  
 (Game); Software (Personal); Software (Systems);  
 Storage Devices; System Units  
 Computer Models: Commodore 64;  
 IBM PC, PC-XT  
 Sales: \$2,600,000 (1984 Estimated)  
 % Sales: 75 (hardware), 25 (software)  
 % of Business: 60% walk-in; 40% outside  
 sales  
 Number of Stores: 3  
 Projected # Stores: 3 (3/86)  
 Private Label: Software, Supplies  
 Services: Repair/Educational/Hot-Line/On-Site  
 Training  
 Year Founded: 1981  
 R.ROSSINI-President, General Buyer

A true and correct copy of Business Guides' 1985 master seed list for its "1985 Directory of Computer and Software Retailers" certified by Victoria M.K. Burdick before

a notary public showing the seeded entry is attached hereto as Exhibit "J".

13. I received a promotional letter dated December 11, 1986 from Michael Shipp addressed to "Nick Rossini" in care of "Rossini's Computer Room." The December 11, 1986 letter is attached hereto as Exhibit "K".

14. I recently reviewed defendant's 1987 edition of "THE PERSONAL COMPUTER - AN INDUSTRY SOURCE BOOK." There, defendant listed under a section entitled "Franchisors & Chains" the seeded company "Rossini's Computer Room." Defendant listed "Rossini's" President as "Nick Rossini", and its business address as 87-32 253rd Street, Bellerose, New York 11426. A true and correct copy of the cover, copyright page, table of contents, section heading, and page with the seeded "Rossini's" entry from defendant's 1987 edition is attached hereto as Exhibit "L".

15. I can think of no explanation for the fact that the seeded entry appears in defendant's 1987 edition other than that defendant copied plaintiff's 1985 seeded entry. I believed that this alone is substantial evidence of unauthorized copying and use of plaintiff's business directories. Together with the other evidence described above, I believe the fact that defendant copied portions of plaintiff's business directories practically is irrefutable.

16. I am aware of no company doing business as Rossini's in Bellerose, New York, as previously described. No company does business at 87-32 253rd Street, Bellerose, New York, as this is my home address. "Nick Rossini" listed as the president of "Rossini's Computer

Room" in defendant's directory in fact is a variation of my daughter's name.

17. I understand that Chief Magistrate Woelflen raised questions in his Report and Recommendation dated April 3, 1987 concerning the veracity of plaintiff's representations concerning, among other things, the "NFR Computer Room" seed. I am prepared to testify before the Chief Magistrate or the Court with respect to these matters in an effort to demonstrate plaintiff's good-faith belief that defendant had infringed its copyrights.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25 day of April, 1987, at New York, New York.

/s/ Richard J. Rossini  
Richard J. Rossini

(All Exhibits and Certificate of Service  
Omitted in Printing)

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Attorneys for Plaintiff,  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.,  
Plaintiff,

v.

CHROMATIC  
COMMUNICATIONS  
ENTERPRISES, INC. and  
MICHAEL SHIPP,  
Defendants.

) No. C866164 SC  
)  
) DECLARATION  
) OF MICHAEL  
) LAMBE  
)  
) FILED  
) APR 27 1987  
)  
)  
)

I, MICHAEL LAMBE, DECLARE AS FOLLOWS:

1. The following declaration is based on my personal knowledge. If called upon to testify, I could testify competently as to the matters set forth herein.

2. I am the Director of Research at Business Guides, Inc., plaintiff herein. My job responsibilities include overseeing research of the business listings appearing in Business Guides' 18 Business directories. I previously have submitted two affidavits to the Court in connection with plaintiff's application for a temporary restraining order ("TRO") in the above-entitled matter. In



addition, I submitted a third affidavit to Chief Magistrate Woelflen to explain that there is a retail store called "Computer Discount of New Jersey" doing business in West Milford, New Jersey. Unfortunately, I was unable to attend the January 29, 1987 hearing before the Chief Magistrate because of the death of my uncle in Europe. I had to go to Europe both to attend his funeral, and to take care of matters regarding his estate. Because I believe that important facts regarding Business Guides' "seeds" either have not been fully presented or have been misunderstood, I respectfully submit this additional declaration.

3. Business Guides is a subsidiary of Lebhar-Friedman, Inc. Lebhar-Friedman was found in 1925 and is an established publisher of retail trade publications, both magazines and journals. These publications are subscribed to by over 500,000 business people annually. Lebhar-Friedman publishes eight trade journals, all pre-eminent in their fields. Business Guides published 18 directories covering 35 major retail and wholesale industries. Business Guides' entire data base also is available on electronic media. For example, Business Guides' Directory of Computers + Software Retailers provides a nationwide list of companies and individuals who sell computers and/or software equipment. This directory is extremely useful to companies and individuals in that business so that they may be able to identify their potential market, competitors and prospective customers.

4. Research for the directories is conducted through telephone interviews with prospective listings, and via questionnaires sent to the companies to solicit information. I formulated and drafted the questionnaires

which Business Guides sends to its prospective listings. Typically, I signed the questionnaires and supervised the cataloging of information listed on the returned questionnaires.

5. Business Guides' research procedure is that, when a questionnaire has not been returned within a certain period of time, one of our telephone staff calls the prospective listing to solicit the information requested in the questionnaire. When the telephone staff has done this, he or she writes his or her initials on the questionnaire to show that the information was received by telephone, rather than filled out by a representative of the company. Business Guides also employs "telephone supervisors" who double check certain of the telephone interviews conducted by approximately 35 temporary telephone staff. For example, a telephone supervisor may double check 20% of the telephone calls made by a new person on the telephone staff. A telephone supervisor may only double check 5 or 10% of the telephone calls made by a more experienced member of the telephone staff.

6. During the relevant time period, before 1986, Business Guides used an outside computer supplier in Princeton, New Jersey, Sedgwick Print Out Systems, Inc. The information received on questionnaires and by telephone staff was stored electronically at Sedgwick. Sedgwick would produce questionnaires from the information it electronically stored in Business Guides' data base. The questionnaires were sent to Business Guides, and then sent out to listings through Business Guides' mailroom. When information is received by Business Guides on the questionnaires, and Business Guides' editors would edit the printouts previously received from Sedgwick, and



send the edited version to Sedgwick. Sedgwick's operators then would key punch the edited information onto the data base in "fields." For example, changes in address, telephone number, or name of company would be edited by entering the information in the appropriate field. Thus, the new information would be merged with the "master tape." Sedgwick would then produce a new set of printouts, along with "control lists" which are also organized in fields. Approximately 9 editors at Business Guides then would proofread the printouts, and return them to Sedgwick, for additional key punching if necessary. Sedgwick operators then would electronically update the master file and produce camera ready repro pages. After receiving the repro pages from Sedgwick, Business Guides would send the repro pages to Port City Press in Baltimore, Maryland. There, the repro pages are photographed, plates made and pages printed for the final bound directory.

7. Employees at Business Guides then input the data received from the questionnaires onto a word processing system to be printed, first on proof sheets and then in a final published directory. During this process, editors proofread and check business entries for accuracy and, occasionally, telephone prospective listings to gather further information where the editor believes that the information on the questionnaire is, for some reason, not sufficient. Because telephone supervisors and/or editors may amend or revise information during the proofing and printing stages, and because of possible keypunch error, information which appears on the questionnaires occasionally will be different from information which appears in the finally published directory. As set forth in

the accompanying declaration of Victoria M. K. Burdick, the 1984 master seed lists for Business Guides' Directory of Computers + Software Retailers consists for the most part of discrepancies between the questionnaires and the already printed 1984 Directory.

8. It is important to understand the investigations done by Business Guides' Research Department under my direction both before and after the hearing on the TRO. Business Guides first become aware that defendants likely were copying its "Directory of Computer + Software Retailers" when Victoria Burdick, then working for me in the Research Department, found an entirely fictitious seed, "NFR Computer Room", in defendants' 1985 edition of "THE PERSONAL COMPUTER - AN INDUSTRY SOURCE BOOK." However, because defendants were perceived to be a minor competitor at the time, Business Guides did not follow up on this discovery.

9. When defendants published a diskette entitled "MICROLEADS" in 1986, Business Guides decided to investigate whether defendants had continued to copy our seeds. Victoria White, Associate Director of Mail Marketing Research, had a printout prepared of defendants' diskette. The first stage of the Research Department's investigation was to determine if Business Guides' planted seeds appeared on defendants' diskette.

10. In October, 1986, I asked Gerard Loesch to compare the printout of defendants' diskette with Business Guides' master seed lists for Directory of Computer + Software Retailers for the years 1984, 1985 and 1986. Mr. Loesch found instances of five companies which appeared on the seed lists and on defendants' diskette:

Coast Computer Center, Computerland, Yes Computer, Software Galeria and Computers & Applications. I instructed Mr. Loesch to prepare a list of those companies to give to Victoria White. My understanding is that Ms. White forwarded this list of Lisa Margolis of the Finley, Kumble law firm on or about October 24, 1986.

11. I, along with Richard J. Rossini, a Business Guides employee, then personally compared the 1984, 1985 and 1986 Master Seed Lists with defendants' 1985 edition of THE DIRECTORY OF MICROCOMPUTER RETAILERS and defendants' 1985 edition of THE PERSONAL COMPUTER - AN INDUSTRY SOURCEBOOK. We found four additional instances where companies listed as seeds in our 1984 master seed lists appeared in defendants' publications: Price Electronics Corp., Computer Discount of New Jersey, Premier Source Distributing, Inc. and Eagle Microsystems.

12. At the request of Lisa Margolis, I photocopied the pages from Business Guides' Directory which contained the entries listed as seeds on the master seed lists. I also photocopied pages from defendants' publications which contained information listed as seeded on the master seed lists. I drew boxes around those entries, and forwarded the photocopies to Lisa Margolis.

13. At the time I photocopied the seeded entries and sent them to counsel, I relied on the accuracy of the master seed lists. (The master seed lists for THE DIRECTORY OF COMPUTER + SOFTWARE RETAILERS were prepared by Victoria Burdick in 1984 and 1985, and John Leavy in 1986.) I was not requested to do any background research by counsel, nor did I look at the

questionnaires from years past to double-check the accuracy of the master seed lists as I had never found the master seed lists to be in error before that. In fact, I had checked them for use in other cases, such as *Business Guides v. R.R. Bowker* in the Southern District of New York.

14. Before the November 7, 1986 hearing on the TRO Lisa Margolis called to tell me that Judge Conti's law clerk had requested additional information regarding the ten seeded entries I had forwarded to counsel. Specifically, I was told that the Judge's law clerk wished to know precisely what was incorrect about the seeded entries. To respond, I went back to the master seed lists and compared the entries thereon with defendants' publications. I also attempted to check the accuracy of the seeds which were easily verifiable. I did this by checking Business Guides' 1985 and 1986 directories, and the U.S. Post Office zip code directory. I did not attempt to find questionnaires for years past warehoused in Long Island, nor did I make phone calls to any of the listed companies.

15. I found "The Software Service Center" listed correctly in our 1986 Directory. I therefore realized that the entry on the 1985 master seed list which listed "The Software Service Center" as an incorrect seed, and the "Software Galeria" as the correct information was "reversed." In other words, someone had transposed the information intended to be listed as a seed with the information intended to be listed as correct. I therefore did not include "The Software Service Center" in my Sealed Supplemental Affidavit filed with the Court in support of the TRO.



16. By checking the zip code directory, I also discovered that 77840 was the correct zip code for College Station, Texas. Because the seeded information for Yes Computer was the zip code, and the zip code was in fact correct, I did not include Yes Computer in my Sealed Supplemental Affidavit filed with the Court.

17. By checking the 1985 Directory under Coast Computer Center, I discovered that Mike Seigrist, Jr. was listed as the General Manager. This was the same information that had been listed in the 1984 Directory, and had been listed as a seed in the 1984 Master Seed List. Because the supposedly seeded information appeared as correct in the 1985 Directory, I did not include Coast Computer Center in my Sealed Supplemental Affidavit filed with the Court.

18. Before November 7, 1986, I had several telephone discussions with Lisa Margolis in which I told her the specific information in defendants' directories which was identified as incorrect in Business Guides' 1984, 1985 and 1986 master seed lists. I told Ms. Margolis not to include Yes Computer, Coast Computer Center and the Software Service Center for the reasons described above.

19. On the morning of November 7, 1986, the day of the TRO hearing, Michael Bamberger of Finley, Kumble's New York office brought me a draft of my Sealed Supplemental Affidavit for review. In reviewing the draft of my Supplemental Affidavit prepared by Finley, Kumble, I relied on the accuracy and integrity of Business Guides' master seed lists. I approved the text of the affidavit, with one exception, the paragraph regarding Eagle Microsystems.

20. With respect to Eagle Microsystems, when I checked the zip code directory, I found that defendants had listed the correct zip code for Auburn, Alabama: 36830 and that it was Business Guides which had mistakenly typed 36850 as the "correct" information on the 1984 master seed list. I therefore told Mr. Bamberger that that company should not be included in my Sealed Supplemental Affidavit. I understood that that company would not be included in the affidavit filed with the Court. I since have learned that the paragraph referring to Eagle Microsystems was crossed out in pen, but the paragraph remained in the affidavit.

21. Because I knew that the defendant had copied the "NFR Computer Room", a wholly-fictitious seed (based on Richard Rossini's home address and daughter's name), I knew that it had copied our publication and I believed that defendants likely had copied additional seeded material. Further, by looking at Business Guides' 1985 Directory, I found "Computer Discount of New Jersey" listed. I therefore believed that the 1984 entry "Computer Discount of America" was in fact a seed. I did not think, nor was I advised by counsel, to double-check the accuracy of the master seed lists by telephoning businesses listed as seeds, or trying to find questionnaires from years back used to prepare the master seed lists. I was under substantial time pressure because I was told about the Judge's law clerk request for additional information only a few days before the hearing on the TRO and it would have been [sic] taken several days to retrieve the questionnaire from storage in a Long Island warehouse. I did not receive for review my Sealed Supplemental Affidavit, drafted by counsel, until the morning



of the November 7 hearing. In all events, I believed in and relied upon the accuracy of those master seed lists. While I admit that some of the information on the master seed lists turned out to be inaccurate, I state unequivocally that at no time did I purposefully lie to the court or knowingly affirm erroneous information.

22. I subsequently was informed that the Judge's law clerk had called the businesses listed in my Sealed Supplemental Affidavit, and had found that some of the information in my affidavit was incorrect. I understood that the Judge's law clerk had confirmed that defendants had incorrectly written Computers & Applications' store manager's name as David Choy, but was unable to verify whether NFR Computer Room was a fictitious company. I further understood that the Judge's law clerk discovered that defendants had printed correct information for Computerland, Premier Source Distributing and Price Electronics. Finally, I understood that the Judge's law clerk believed that there was no company named "Computer Discount of New Jersey."

23. As a result on November 8, 1986, Business Guides investigated further into what we thought were seeded company listings. Victoria Burdick, Gerard Loesch and I called the same companies that the Judge's law clerk had. We discovered that the Judge's law clerk was correct that defendants had printed correctly its listings for Computerland, Premier Source Distributing and the current address of Price Electronics. However, we discovered that a retail company called "Computer Discount of New Jersey" continues to do business in West Milford,

New Jersey, but that the mail-order company listed by defendants, "Computer Discount of America", is now known by the name of "World of Computers."

24. In order to determine what had gone wrong with the 1984 master seed lists, I requested the Research Department to retrieve the questionnaires from our Long Island warehouse corresponding to the entries on the master seed lists. I discovered that the 1984 questionnaire, apparently filled out by someone at Premier Source Distributing, had listed the spelling of the Sales Manager as Don Blodsoe. As explained by Victoria Burdick in her accompanying declaration, this is why Bledsoe was listed as a seed in the 1984 Master Seed List.

25. The 1984 questionnaire for Price Electronics Corp. showed that the company listed its mailing address at the time as 1813 Elmdale Avenue, Glenview, Illinois, 60025. This is why the address that the company intended to move to was listed as a seed in the 1984 directory.

26. We have been unable to find the 1984 questionnaire for Computerland. However, we have discovered that the incorrect address, 3845 Bay Road, appears in our 1983 directory. Questionnaires sent to previously listed companies contained the information listed in the prior bound editions. This leads me to believe that the 1984 questionnaire also showed the address listed as 3845 Bay Road. However, someone at Business Guides obviously found our error and changed the address as printed in the 1985 directory to 3545 Bay Road. Because Victoria Burdick thought that the information on the 1984 questionnaire (i.e. 3845) was correct the address 3545 was listed as a seed in the 1984 master seed list.

27. The questionnaires for the years 1984 and 1985 for "Computer Discount of New Jersey" show that the company's retail store was called "Computer Discount of New Jersey" but that its mail order operation was called "Computer Discount of America." I therefore felt that the Computer Discount of New Jersey was an accurate seed in the 1984 master seed list. I, along with Mr. Bamberger, went to Computer Discount of New Jersey to verify this. We also learned, as described in the affidavit I previously have filed with the court, that Computer Discount of New Jersey and Computer Discount of America operated next door to each other at different addresses in the same shopping mall. The shopping mall changed its address system, so that the addresses of both companies changed. Then, Computer Discount of America was sold to a new owner who changed its name to "World of Computers."

28. I discussed all of the information resulting from the Research Department's third stage investigation with Victoria Burdick. Unfortunately, I had to go to Europe in January, 1987, because of the January 17th death of my uncle. Mr. Ephraim Margolin never spoke with me regarding the January 29, 1987, hearing before the Chief Magistrate, nor did I attend that hearing.

29. In early January, 1987, I attended a meeting with Mr. Bamberger and Mr. Allen Gelb in Mr. Gelb's office at the Finley, Kumble law firm in New York. The purpose of the meeting was to discuss what had gone wrong with the 1984 master seed list. It was at this meeting that Victoria Burdick and I remembered that the 1984 master seed list was prepared in November, 1984, after the 1984 edition had been published in April. Ms. Burdick and I then remembered for the first time that the 1984 seed list

had been prepared after the fact, not in accordance with Business Guides' usual procedure of intentionally planting seeds in a directory prior to publication. As more particularly described in Ms. Burdick's accompanying declaration, I believe this fact is very important to understand the innocent nature of the errors in the 1984 master seed list.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of April at New York, New York.

/s/ Michael Lambe  
Michael Lambe

(Certificate of Service  
Omitted in Printing)

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Attorneys for Plaintiff,  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES, INC.	) No. C866164 SC
Plaintiff,	)
	) SEALED
v.	) DECLARATION
CHROMATIC COMMUNICATIONS	) OF VICTORIA
ENTERPRISES, INC. and	) WHITE
MICHAEL SHIPP,	)
Defendants.	)

I, VICTORIA WHITE, DECLARE AS FOLLOWS:

1. The following declaration is based on my personal knowledge. If called upon to testify, I could testify competently as to the matters set forth herein.

2. I am associate director of Mail Marketing Resources at Business Guides, Inc., plaintiff in the above-entitled matter. I have held that position since August 1985. All told, I have worked for Business Guides for eight years.

SUBMITTED UNDER  
SEAL PURSUANT TO  
ORDER OF THE COURT  
ON FILE HEREIN

3. I was the person at Business Guides primarily responsible for communicating with the New York office of Finley, Kumble in the above-entitled action against Chromatic Communications Enterprises, Inc. and Michael Shipp. Upon the recommendation of our in-house counsel, I was the person who initially approached Michael Bamberger of Finley, Kumble to seek counsel regarding a potential law suit against defendants. In so doing, I relied entirely upon information given to me by the Research Department at Business Guides with respect to certain "seeds" that had been found in defendants' publications.

4. In late 1986, I received information from Victoria Burdick which led me to believe that defendants may have been copying without permission entries in Business Guides' 1984 publication of "Directory of Computers + Software Retailers." Ms. Burdick had shown me an entry in defendants' 1985 edition "THE PERSONAL COMPUTER - AN INDUSTRY SOURCEBOOK." That entry was for NFR Computer Room, 87-32 253rd Street, Bellerose, New York, 11426. In fact, that entry was totally fictitious. The listed address in fact was Mr. Rossini's home address. Thus, because the entry was totally fictitious, I could conceive of no way that defendants had come upon that address and business name without having read and copied Business Guides' Directory.

5. In or around September, 1986, I received one of defendants' newly-created "diskettes", a 1986 edition of "MICROLEADS." The fact that defendants were publishing diskettes caused me some concern because it appeared that they had grown into a substantial business, and might pose a direct threat to Business Guides' market. I therefore requested that the operations department

"dump", i.e., prepare a printout, of the diskette, and provide our Research Department with that printout to review to determine if defendants had copied from Business Guides' publications other entries in their publication.

6. In early October, I received from Gerard Loesch a list of five companies which, he told me, showed entries which appeared both on Business Guides' Master Seed Lists, and on defendants' diskette. I checked the 1986 Business Guides' Computer + Software Directory and the printout of the diskette and confirmed the fact that those entries did in fact appear in Business Guides' and defendant's publications.

7. I took copies of the five entries given to me by Gerard Loesch, as well as a copy of the NFR Computer Room entry in defendants' directory and took this information to Lionel Popkin, Business Guides' senior in-house counsel. Mr. Popkin suggested that I take this information to Michael Bamberger of Finley, Kumble's New York office.

8. When I took the information to Mr. Bamberger, he told me he thought we had a good case for copyright infringement and that an associate from his firm would get back to me regarding proceeding. Lisa Margolis from Finley, Kumble's Beverly Hills office contacted me about a week later, and sent out a cease-and-desist letter to defendant Michael Shipp. Ms. Margolis did not send me the cease-and-desist letter to review before it went out, nor had I sent her a list of the seeded information before the letter went out.

9. On October 24, 1986, I sent a letter to Lisa Margolis which attached the list of the five entries found both on Business Guides' Master Seed Lists and defendants' diskette, as prepared by Gerard Loesch. A true and correct copy of the letter with the attachments is attached hereto as Exhibit "A".

10. Between October 24 and October 28, 1986, Michael Lambe gave to me photocopies of four additional entries which, he told me, appeared on Business Guides' master seed lists and in defendants' directories. He also circled, both in Business Guides' publications and in defendants' directory and printout from the diskette, ten entries in total which, he told me, were seeds. The ten entries included NFR Computer Room, the five entries found by Gerard Loesch on defendants' diskette, and the four additional entries found by Mr. Lambe. I relied on the accuracy of the information given to me by Mr. Lambe and Mr. Loesch of the Research Department, and therefore did not check the accuracy of the information which I was told was seeded.

11. On October 28, 1986, I sent a letter to Lisa Margolis, with photocopies of the ten seeded entries in defendants' publications prepared by Michael Lambe together with various copies of Business Guides' and defendant's publications. A true and correct copy of that letter, is attached hereto as Exhibit "B".

12. Before the November 7, 1986 hearing on plaintiff's application for a temporary restraining order before Judge Conti, Lisa Margolis called me several times with specific questions about the seeded entries in defendants' directories. Ms. Margolis wished to know what qualified



the listings to be seeded entries. Each time she asked me such questions, I referred her to Michael Lambe, as I was not involved in preparation of the master seed list or the Business Guides directories in question.

13. I did not participate in preparing affidavits or papers in support of plaintiff's application for a temporary restraining order. I was shocked to find out on November 8 that Judge Conti's law clerk had discovered that certain of the information on the photocopied list of seeds in defendants' directories had turned out to be correct, when we thought the information was incorrect. That day, I listened while Victoria Burdick telephoned Computer Discount of New Jersey to verify whether the company did in fact do business under that name.

14. I did not speak to Mr. Ephriam Margolin before the January 29, 1987, hearing before the Chief Magistrate. I believe it is important for the Court to understand that, at the request of our in-house counsel, I contacted the Finley, Kumble law firm regarding Business Guides' intention to proceed in this action. In so doing, I relied on the information given to me by my co-workers at Business Guides. I am dismayed that certain of that information turned out to be inaccurate. At the time, I had no reason to believe that any of that information was inaccurate; rather, I relied on the accuracy of the information as conveyed to me. I sincerely apologize to the Court for the fact that certain information turned out to be inaccurate. I do believe, however, that there is strong evidence that defendants have copied without authorization Business Guides' directories.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of April, 1987, at New York, New York.

/s/ Victoria White  
Victoria White

(All Exhibits & Certificate of Service Omitted in Printing)

---

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Attorneys for Defendants  
 CHROMATIC COMMUNICATIONS ENTERPRISES,  
 INC. and MICHAEL SHIPP

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

BUSINESS GUIDES,	)	NO. C 86
	)	6164 SC (FW)
Plaintiff,	)	DECLARATION
	)	OF MICHAEL
v.	)	SHIPP IN
CHROMATIC	)	SUPPORT OF
COMMUNICATIONS	)	MOTION FOR
ENTERPRISES, INC., and	)	AWARD OF
MICHAEL SHIPP,	)	SANCTIONS
Defendants.	)	

I, Michael Shipp, declare:

1. I am now, and at all times herein relevant was, the President of Chromatic Communications Enterprises, Inc. ("Chromatic"). Prior to the incorporation of Chromatic in 1983, my family and I operated the same business, under the name Chromatic Communications. I have personal knowledge of the matters set forth below, and could testify thereto if called upon to do so.

2. Chromatic is in the business of publishing and marketing books and computer diskettes which constitute lists or compilations of computer retailers and software

dealers. We started our initial venture in this area in late 1981 when a survey of the market for such products revealed a lack of availability of appropriate lists or directories. I decided to enter the market, essentially as a one-man operation with part-time help from my mother and brother and began preliminary collection of data.

3. We conducted independent data collection for each of our publications. The names, addresses, and telephone numbers of many computer hardware and software dealers were obtained from dealer lists provided by manufacturers and by chain store owners. Each listing we obtained through such means was checked independently by the mailing of a survey, which the dealer/manufacturer was to complete. Each company that did not return a survey was called and interviewed over the telephone.

4. Chromatic first published the book "Personal Computer and Industry Source Book" ("the Book") in approximately April of 1983. The Book has been updated since 1983, and is now called "MicroLeads," but each successive edition had been based substantially on the original data collected, modified as necessitated by the ongoing process of checking with listed dealers/manufacturer.

5. It is my understanding from the pleadings filed herein by plaintiff that plaintiff publishes a book entitled "The Directory of Computer and Software Retailers". I can state unequivocally that I never purchased, borrowed, otherwise acquired, or ever had in my possession any such publication prior to preparation by Chromatic of its directories. My only awareness of plaintiff's book was having seen it at plaintiff's promotional booth at



Comdex in Las Vegas. Because I am responsible for, completely direct, and in large part perform, all of the steps necessary for the publication of Chromatic's directories, I can state with complete confidence that no one else at Chromatic ever bought, borrowed, otherwise acquired, or even saw the publication known as "The Directory of Computer and Software Retailers".

6. I have personally reviewed portions of this Court's record, following the unsealing thereof on or about April 12, 1988. From my review of that record, it appears that plaintiff is contending that I copied its publication, and although it originally pointed to ten so-called "seeds" which allegedly prove such copying, that claim is now reduced to a single "seed": Richard Rossini. From a review of my own records, I have determined that Richard Rossini, doing business as The Answer Man, was added to our data base when he ordered one of our directories. Attached hereto as Exhibit "A" is a true and correct copy of his order. Attached hereto as Exhibit "B" is a true and correct copy of his recent order for Micro-Leads. Following our standard practice, I forwarded to Mr. Rossini a questionnaire or survey for completion and return. Attached hereto as Exhibit "C" is a true and correct copy of the completed survey form I received from Mr. Rossini.

7. Shortly after October 16, 1986, I received a letter from Lisa B. Margolis, Esq., an attorney with the Beverly Hills firm of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, accusing me of infringing the copyright of her client, demanding that I cease and desist so doing, and threatening immediate litigation unless I complied. My immediate response was to prepare and

send a letter to my attorney, John Cornelius of Concord, California. A true and correct copy of that letter is attached hereto as Exhibit "D". In that letter, I indicated my willingness to show plaintiff all documents used in preparing our directory, including telephone bills, manufacturer lists, newspaper clippings, and the like, and to sit down and perform a line-by-line comparison of both our present and past directories with that published by plaintiff. In addition, I instructed Mr. Cornelius to communicate my willingness in this regard to Ms. Margolis, and to my knowledge he did so. Attached hereto as Exhibit "E" is a true and correct copy of Mr. Cornelius' letter of October 24, 1986, to Ms. Margolis, which enclosed a copy of Exhibit "D" hereto. Neither I nor Mr. Cornelius received any response whatsoever to his letter, until he received a Western Union Mailgram dated October 30, 1986, indicating that plaintiff was going to file suit. Plaintiff filed this action on October 31, 1986, and applied for a temporary restraining order that would prevent me from marketing the books, would have brought my business to a complete standstill, and deprived me of my only source of income. Further, the suit requested damages against my company and me personally totalling several million dollars.

8. While I knew I was innocent of any and all allegations, my immediate concern was whether I could muster the financial resources to defray the legal costs that could be incurred during a long and protracted lawsuit. To finance the defense of this action and to allow for the time required for me personally to defend against the

suit, I restructured Chromatic Communications' marketing program. The out-of-pocket costs of this restructuring, along with related attorney fees are \$45,527.62, plus attorneys fees incurred following this Court's issuance of its Order on April 12, 1988. I consider these losses, damages and expenses suffered by Chromatic Communications to be the direct and proximate result of the filing and pendency of this action. These out-of-pocket losses, damages and expenses are set forth with more specificity below:

(a) *Legal Fees:* In October of 1986, when I first received a letter from Ms. Margolis, I consulted with my regular counsel, Page, Akulian & Harkins, and was thereafter referred to John Cornelius. I paid the firm of Page, Akulian & Harkins \$250 for the consultation. I then consulted with John Cornelius, who corresponded with Ms. Margolis, prepared initial response papers to the litigation, and referred me to Cooper, White & Cooper. I paid Mr. Cornelius \$500 for his services. To date I have paid the law firm of Cooper, White & Cooper \$5,150 in attorney fees, and anticipate paying that firm at least an additional \$2,500 in connection with its review of the Court file and preparation of this Motion for an award of sanctions.

(b) *Business Losses.*

(1) Chromatic lost \$29,856.40 in excess costs on brochures, and in lost profits. I had planned to mail 150,000 brochures for our Dealers on Diskette in 1987. Because of the pendency of the action, and the inherent threat of an injunction, we cut the number of brochures to 100,000 and broke the mailing into two parts. The actual

printing costs totalled \$8,484.60, or \$1,450.20 more than would have been charged for a single print run of 100,000 brochures. Furthermore, because I felt uneasy about mailing the additional 50,000 brochures, we lost net income of \$28,406.20. This net income figure is calculated as follows: our direct mail response on the 100,000 brochures was .0016% which, at \$595.00 per diskette, totals lost revenue of \$47,600. At the same time, however, our costs were reduced, in that we saved \$3,950.80 on printing costs, \$6,250 on postage, \$6,250 on mail lists, \$1,900 for a mail house, and \$840 on assembly and disk preparation, for a total net income loss of \$28,406.20. Added to this is the extra \$1,405.20 in printing costs incurred, for a total profit loss of \$29,856.40.

(2) With respect to our Vendor Brochure, I likewise reduced the mailing from 150,000 brochures to 100,000 brochures, and broke the printing and mailing into two parts. For that brochure, the extra printing costs were \$3,904.56, and the lost revenue (50,000 brochures times .0025% direct mail response rate times \$247.50 per book) totalled \$30,938. After deducting costs comparable to those set forth in the subparagraph above, the loss of net income to Chromatic for the Vendor Brochure was \$5,516.66, together with the additional printing cost of \$3,904.56, for a total loss of \$9,421.22.

9. Although it is difficult, if not impossible, to quantify at this time the impact on our business reputation caused by this action, it is my opinion that the business reputation of Chromatic has suffered substantially and possibly irreparably, given the cash flow impact and marketing restructure required by the plaintiff's lawsuit. The Complaint filed by plaintiff in essence accuses me, and



Chromatic, of theft of the property of another, and raises serious and substantial questions, on the public record, concerning the honesty, integrity, and reliability, of both Chromatic and me. That cloud has hung over us since this action was filed on or about October 31, 1986, and remains to this date.

Executed at San Francisco, California, this 11th day of May, 1988. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Michael Shipp  
Michael Shipp

## EXHIBIT A

A

## INTRODUCTORY OFFER FOR PREFERRED SUBSCRIBERS ONLY

YES, please send me The Directory of Microcomputer Retailers *ON DISKETTE* at the special introductory price of \$495. I understand this represents a \$300 savings off the normal issue price of \$795.

☒ Payment enclosed

(Please make checks payable to CCEP)

☐ COD

☐ Please charge

☐ Visa

☐ Mastercard

Signature Richard Rossini

Card Number \_\_\_\_\_

Expiration Date \_\_\_\_\_

**LIMITED TIME  
OFFER**

Respond by  
May 31, 1986

Name Richard Rossini

Company The Answer Man

Address 87-32 253rd St.

City/State/Zip Bellerose, NY 11426

Phone \_\_\_\_\_

Chromatic Communications Enterprises, Inc.

P.O. Box 3249, Walnut Creek, CA 94598 (415) 945-1602

**SPECIAL OFFER FOR PREFERRED CUSTOMERS**

YES, ENTER 1 order(s) for the 1987 Edition of The Personal Computer—An Indus Source Book at the special rate of \$247.50 I understand this represents a SAVINGS of 50% off normal price of \$495.

☒ Payment enclosed

☐ COD

☐ Please charge my

☐ Visa

☐ Mastercard

Signature \_\_\_\_\_

Card Number \_\_\_\_\_

Expiration Date \_\_\_\_\_

**LIMITED TIME  
OFFER**

Respond by  
December 31, 1986

Name Richard Rossini

Title President

Company The Answer Man

Address 87-32 253rd St.

City Bellerose

State NY

Zip 11426

Phone 718-343-0114

*California residents please add \$14.85 for state sales tax.*

THE PERSONAL COMPUTER—AN INDUSTRY SOURCE BOOK

P.O. Box 3249, Walnut Creek, CA 94598 (415) 945-1602



MicroLeads™  
Vendor Directory\*  
1988 Edition Just Released  
ONLY \$247.50  
SAVE 50%

## EXHIBIT B

Customer:		Ship To:	
Richard Rossini ANSWER MAN 87-32 253rd Street Bellerose NY 11426		Richard Rossini Answer Man 87-32 253rd St. Bellerose NY 11426	
Form of Payment: <input checked="" type="checkbox"/> Check Enclosed <input type="checkbox"/> COD <input type="checkbox"/> VISA <input type="checkbox"/> Master Charge			
Name on Card:			
Card Number:			
Expiration Date:			
Qty.	Description	Cost	
1	copy of MicroLeads - Vendor Directory	\$ 247.50	
1	copy of MicroLeads - Dealer Directory	FREE**	
** If the MicroLeads Vendor Directory is ordered by March 15.		Sales Tax	
		\$ 0.00	
		Freight	
		\$ 0.00	
(718) 343-0114		Total Due	
		\$ 247.50	

\*Formerly The Personal Computer - An Industry Source Book.

C

THE PERSONAL COMPUTER -  
AN INDUSTRY SOURCE BOOK  
P.O. Box 3249  
Walnut Creek, CA 94598  
(415) 945-1602

March 20, 1986

Nick Rossini  
NFR COMPUTER ROOM  
87-32 253rd Street  
Bellrose NY 11426

Nick Rossini

The following information was published in the 1985-1986 edition of The Personal Computer - An Industry Source Book. We would appreciate your making any necessary changes to your listing and returning it to us by May 1, 1986.

*Rossini's Computer Room*  
~~NFR COMPUTER ROOM~~  
87-32 253rd Street  
Bellrose NY 11426

#### INDUSTRY MEMBERS

President

Nick Rossini

#### COMPANY PROFILE

Year Established:  
Number of Employees:  
Sales Volume:  
Form of Entity:

1981  
5  
\$2.5-\$5MM  
Sole Proprietorship

#### PRODUCT LINE DESCRIPTION

Three store retail chain operating in New York State.

Sincerely,

Michael Shipp  
Publisher

(Exhibits "D" & "E",  
& Certificate of Service  
Omitted in Printing)